

LEGISLATURE OF NEBRASKA
 ONE HUNDREDTH LEGISLATURE
 FIRST SESSION
LEGISLATIVE BILL 223

FINAL READING

Introduced by Revenue Committee: Janssen, 15, Chairperson; Burling, 33; Cornett, 45; Dierks, 40; Langemeier, 23; Preister, 5; Raikes, 25

Read first time January 9, 2007

Committee: Revenue

A BILL

1 FOR AN ACT relating to revenue and taxation; to amend sections
 2 77-375, 77-3,112, 77-2701.35, 77-2703.04, 77-2712.03,
 3 77-2790, 77-27,131, 77-27,190, 77-27,192, 77-3102,
 4 77-3903, 77-3904, 77-4105, 77-4110, 77-4933, and 77-5542,
 5 Reissue Revised Statutes of Nebraska, and sections
 6 77-2701, 77-2701.04, 77-2703, 77-2711, 77-2712.05,
 7 77-2753, 77-2756, 77-27,187.01, 77-27,187.02, 77-27,188,
 8 77-27,189, 77-5715, 77-5725, 77-5803, and 77-5904,
 9 Revised Statutes Cumulative Supplement, 2006; to change
 10 and eliminate sales and use tax provisions; to change
 11 provisions relating to the streamlined sales and use
 12 tax agreement; to change tax incentive and reporting

1 requirements laws; to change provisions relating to
2 the Tax Commissioner, disclosure of tax information
3 to the Auditor of Public Accounts, withholding,
4 deficiencies, security, nonresident contractors, and
5 liens; to harmonize provisions; to provide operative
6 dates; to repeal the original sections; and to outright
7 repeal section 77-2703.02, Revised Statutes Cumulative
8 Supplement, 2006.

9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-375, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 77-375 (1) The Tax Commissioner or his or her duly
4 authorized representative may administer oaths and compel the
5 attendance of witnesses and require the production of records as
6 may be necessary for the performance of his or her responsibilities
7 under applicable state law.

8 (2) Any person shall comply with a written demand
9 of the Tax Commissioner requiring the production of records
10 notwithstanding the confidentiality provisions of section 8-1401.
11 The records and the information contained thereon shall be
12 protected pursuant to the confidentiality provisions applicable
13 to the Tax Commissioner. Any person disclosing information to the
14 Tax Commissioner pursuant to a demand for production of records
15 under this subsection is immune from liability, civil, criminal, or
16 otherwise, that might result from disclosing such information. The
17 Tax Commissioner shall pay the costs of providing such information
18 pursuant to section 8-1402.

19 (3) The Tax Commissioner may adopt and promulgate rules
20 of procedure for discovery, not in conflict with the laws governing
21 discovery in civil cases, as may be necessary for the performance
22 of his or her responsibilities under applicable state law.

23 (4) The Tax Commissioner shall have access to the
24 information required to be reported under the New Hire Reporting
25 Act for the purpose of administering taxes he or she has a duty to

1 collect.

2 Sec. 2. Section 77-3,112, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 77-3,112 (1) Notwithstanding any provision of law, the
5 Tax Commissioner shall not approve or grant to any person or
6 taxpayer any tax credit or exemption for the construction of a
7 facility or the employment of people for the disposal in Nebraska
8 of low-level radioactive waste for which a license is required
9 pursuant to the Low-Level Radioactive Waste Disposal Act.

10 (2) Notwithstanding any provision of law, the Tax
11 Commissioner shall not approve or grant to any person any tax
12 credit, exemption, or refund for the employment of any person who
13 has been removed from the United States pursuant to proceedings
14 initiated by the United States Immigration and Customs Enforcement,
15 or other competent authority, or who has been convicted in
16 a criminal court proceeding for offenses related to illegal
17 immigration. Any benefits that were received prior to the removal
18 or conviction will be recaptured to the extent the benefits were
19 received based on the employment of such persons.

20 Sec. 3. Section 77-2701, Revised Statutes Cumulative
21 Supplement, 2006, is amended to read:

22 77-2701 Sections 77-2701 to 77-27,135.01, 77-27,222, and
23 77-27,228 to 77-27,235 and section 5 of this act shall be known and
24 may be cited as the Nebraska Revenue Act of 1967.

25 Sec. 4. Section 77-2701.04, Revised Statutes Cumulative

1 Supplement, 2006, is amended to read:

2 77-2701.04 For purposes of sections 77-2701.04 to 77-2713
3 and section 5 of this act, unless the context otherwise requires,
4 the definitions found in sections 77-2701.05 to 77-2701.47 and
5 section 5 of this act shall be used.

6 Sec. 5. (1) Bundled transaction means the retail sale
7 of two or more products, except real property and services to
8 real property, when (a) the products are otherwise distinct and
9 identifiable and (b) the products are sold for one non-itemized
10 price. Bundled transaction does not include the sale of any
11 products in which the sales price varies, or is negotiable, based
12 on the selection by the purchaser of the products included in the
13 transaction.

14 (2) Distinct and identifiable products do not include:

15 (a) Packaging, such as containers, boxes, sacks, bags,
16 and bottles or other materials such as wrapping, labels, tags, and
17 instruction guides that accompany the retail sale of the products
18 and are incidental or immaterial to the retail sale thereof.
19 Examples of packaging that are incidental or immaterial include
20 grocery sacks, shoeboxes, dry cleaning garment bags, and express
21 delivery envelopes and boxes;

22 (b) A product provided free of charge with the required
23 purchase of another product. A product is provided free of charge
24 if the sales price of the product purchased does not vary depending
25 on the inclusion of the product provided free of charge; and

1 (c) Items included in the definition of sales price
2 pursuant to section 77-2701.35.

3 (3) One non-itemized price does not include a price
4 that is separately identified by product on binding sales or
5 other supporting sales-related documentation made available to the
6 customer in paper or electronic form, including, but not limited
7 to, an invoice, bill of sale, receipt, contract, service agreement,
8 lease agreement, periodic notice of rates and services, rate card,
9 or price list.

10 (4) A transaction that otherwise meets the definition of
11 a bundled transaction is not a bundled transaction if it is (a) the
12 retail sale of tangible personal property and a service where the
13 tangible personal property is essential to the use of the service,
14 and is provided exclusively in connection with the service, and
15 the true object of the transaction is the service, (b) the retail
16 sale of services when one service is provided that is essential
17 to the use or receipt of a second service and the first service
18 is provided exclusively in connection with the second service and
19 the true object of the transaction is the second service, or (c) a
20 transaction that includes taxable products and nontaxable products
21 and the purchase price or sales price of the taxable products
22 is de minimus. De minimus means the seller's purchase price or
23 sales price of the taxable products is ten percent or less of
24 the total purchase price or sales price of the bundled products.
25 Sellers shall use either the purchase price or the sales price of

1 the products to determine if the taxable products are de minimus.
2 Sellers may not use a combination of the purchase price and sales
3 price of the products to determine if the taxable products are de
4 minimus. Sellers shall use the full term of a service contract to
5 determine if the taxable products are de minimus.

6 (5) Bundled transaction does not include the retail sale
7 of exempt tangible personal property and taxable tangible personal
8 property if (a) the transaction includes food and food ingredients,
9 drugs, durable medical equipment, mobility enhancing equipment,
10 over-the-counter drugs, prosthetic devices, or medical supplies and
11 (b) the seller's purchase price or sales price of the taxable
12 tangible personal property is fifty percent or less of the total
13 purchase price or sales price of the bundled tangible personal
14 property. Sellers may not use a combination of the purchase price
15 and sales price of the tangible personal property when making the
16 fifty-percent determination for a transaction.

17 Sec. 6. Section 77-2701.35, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 77-2701.35 (1) Sales price applies to the measure subject
20 to sales tax and means the total amount of consideration, including
21 cash, credit, property, and services, for which personal property
22 or services are sold, leased, or rented, valued in money, whether
23 received in money or otherwise, without any deduction for the
24 following:

25 (a) The seller's cost of the property sold;

1 (b) The cost of materials used, the cost of labor or
2 service, interest, losses, all costs of transportation to the
3 seller, all taxes imposed on the seller, and any other expense of
4 the seller;

5 (c) Charges by the seller for any services necessary to
6 complete the sale;

7 (d) Delivery charges; and

8 (e) Installation charges. and

9 ~~(f) The value of exempt personal property given to the~~
10 ~~purchaser where taxable and exempt personal property have been~~
11 ~~bundled together and sold by the seller as a single product or~~
12 ~~piece of merchandise.~~

13 (2) Sales price includes consideration received by the
14 seller from third parties if:

15 (a) The seller actually receives consideration from a
16 party other than the purchaser and the consideration is directly
17 related to a price reduction or discount on the sale;

18 (b) The seller has an obligation to pass the price
19 reduction or discount through to the purchaser;

20 (c) The amount of the consideration attributable to the
21 sale is fixed and determinable by the seller at the time of the
22 sale of the item to the purchaser; and

23 (d) One of the following criteria is met:

24 (i) The purchaser presents a coupon, certificate, or
25 other documentation to the seller to claim a price reduction

1 or discount when the coupon, certificate, or documentation is
2 authorized, distributed, or granted by a third party with the
3 understanding that the third party will reimburse any seller to
4 whom the coupon, certificate, or documentation is presented;

5 (ii) The purchaser identifies himself or herself to the
6 seller as a member of a group or organization entitled to a price
7 reduction or discount. A preferred customer card that is available
8 to any patron does not constitute membership in such a group; or

9 (iii) The price reduction or discount is identified as a
10 third-party price reduction or discount on the invoice received by
11 the purchaser or on a coupon, certificate, or other documentation
12 presented by the purchaser.

13 ~~(2)~~ (3) Sales price does not include:

14 (a) Any discounts, including cash, terms, or coupons that
15 are not reimbursed by a third party that are allowed by a seller
16 and taken by a purchaser on a sale;

17 (b) Interest, financing, and carrying charges from credit
18 extended on the sale of personal property or services, if the
19 amount is separately stated on the invoice, bill of sale, or
20 similar document given to the purchaser;

21 (c) Any taxes legally imposed directly on the consumer
22 that are separately stated on the invoice, bill of sale, or similar
23 document given to the purchaser; and

24 (d) Credit for any trade-in as follows:

25 (i) The value of property taken by a seller in trade as

1 all or a part of the consideration for a sale of property of any
2 kind or nature; or

3 (ii) The value of a motor vehicle or motorboat taken by
4 any person in trade as all or a part of the consideration for a
5 sale of another motor vehicle or motorboat.

6 Sec. 7. Section 77-2703, Revised Statutes Cumulative
7 Supplement, 2006, is amended to read:

8 77-2703 (1) There is hereby imposed a tax at the rate
9 provided in section 77-2701.02 upon the gross receipts from all
10 sales of tangible personal property sold at retail in this state;
11 ~~the gross receipts of every person engaged as a public utility,~~
12 ~~as a community antenna television service operator or any person~~
13 ~~involved in the connecting and installing of the services defined~~
14 ~~in subdivision (2)(a), (b), or (d) of section 77-2701.16 until~~
15 ~~January 1, 2004, and the services defined in subdivision (8)(a),~~
16 ~~(b), (d), or (e) of section 77-2701.16 beginning on January 1,~~
17 ~~2004, or as a retailer of intellectual or entertainment properties~~
18 ~~referred to in subsection (3) of section 77-2701.16 until January~~
19 ~~1, 2004, and subsection (9) of section 77-2701.16 beginning on~~
20 ~~January 1, 2004;~~ ~~the gross receipts from the sale of admissions~~
21 ~~in this state;~~ ~~the gross receipts from the sale of warranties,~~
22 ~~guarantees, service agreements, or maintenance agreements when the~~
23 ~~items covered are subject to tax under this section;~~ beginning
24 January 1, 2008, the gross receipts from the sale of bundled
25 transactions when one or more of the products included in the

1 bundle are taxable; and the gross receipts from the provision
2 of services defined in subsection (4) of section 77-2701.16 until
3 January 1, 2004, and services defined in subsection (10) of section
4 77-2701.16 beginning on January 1, 2004. Except as provided in
5 section 77-2701.03, when there is a sale, the tax shall be imposed
6 at the rate in effect at the time the gross receipts are realized
7 under the accounting basis used by the retailer to maintain his
8 or her books and records or for a contractor when the payment or
9 payments are received for construction services. For purposes of
10 this subsection until January 1, 2004, the provision of services
11 shall be deemed to be in this state for services provided to real
12 estate if the real estate is located in this state; for services
13 provided to personal property or animals if the personal property
14 or animal is located in this state and the service is rendered
15 for use in this state; for detective services under subdivision
16 (4)(i) of section 77-2701.16, in the case of a customer who is
17 an individual, if the individual is residing in this state, or
18 in the case of a business customer, if the principal place of
19 the business is located in this state; and for computer software
20 training under subdivision (4)(c) of section 77-2701.16 if the
21 training is performed at a location that is within this state for a
22 customer located within this state.

23 (a) The tax imposed by this section shall be collected
24 by the retailer from the consumer. It shall constitute a part of
25 the purchase price and until collected shall be a debt from the

1 consumer to the retailer and shall be recoverable at law in the
2 same manner as other debts. The tax required to be collected by the
3 retailer from the consumer constitutes a debt owed by the retailer
4 to this state.

5 (b) It is unlawful for any retailer to advertise, hold
6 out, or state to the public or to any customer, directly or
7 indirectly, that the tax or part thereof will be assumed or
8 absorbed by the retailer, that it will not be added to the selling,
9 renting, or leasing price of the property sold, rented, or leased,
10 or that, if added, it or any part thereof will be refunded. The
11 provisions of this subdivision shall not apply to a public utility.

12 (c) The tax required to be collected by the retailer from
13 the purchaser, unless otherwise provided by statute or by rule and
14 regulation of the Tax Commissioner, shall be displayed separately
15 from the list price, the price advertised in the premises, the
16 marked price, or other price on the sales check or other proof of
17 sales, rentals, or leases.

18 (d) For the purpose of more efficiently securing the
19 payment, collection, and accounting for the sales tax and for the
20 convenience of the retailer in collecting the sales tax, it shall
21 be the duty of the Tax Commissioner to provide a schedule or
22 schedules of the amounts to be collected from the consumer or user
23 to effectuate the computation and collection of the tax imposed
24 by the Nebraska Revenue Act of 1967. Such schedule or schedules
25 shall provide that the tax shall be collected from the consumer

1 or user uniformly on sales according to brackets based on sales
2 prices of the item or items. Retailers may compute the tax due on
3 any transaction on an item or an invoice basis. The rounding rule
4 provided in section 77-3,117 applies.

5 (e) The use of tokens or stamps for the purpose of
6 collecting or enforcing the collection of the taxes imposed in the
7 Nebraska Revenue Act of 1967 or for any other purpose in connection
8 with such taxes is prohibited.

9 (f) For the purpose of the proper administration of the
10 provisions of the Nebraska Revenue Act of 1967 and to prevent
11 evasion of the retail sales tax, it shall be presumed that all
12 gross receipts are subject to the tax until the contrary is
13 established. The burden of proving that a sale of property is not
14 a sale at retail is upon the person who makes the sale unless he
15 or she takes from the purchaser (i) a resale certificate to the
16 effect that the property is purchased for the purpose of reselling,
17 leasing, or renting it, (ii) an exemption certificate pursuant to
18 subsection (7) of section 77-2705, or (iii) a direct payment permit
19 pursuant to sections 77-2705.01 to 77-2705.03. Receipt of a resale
20 certificate, exemption certificate, or direct payment permit shall
21 be conclusive proof for the seller that the sale was made for
22 resale or was exempt or that the tax will be paid directly to the
23 state.

24 (g) In the rental or lease of automobiles, trucks,
25 trailers, semitrailers, and truck-tractors as defined in the Motor

1 Vehicle Registration Act, the tax shall be collected by the lessor
2 on the rental or lease price at the tax rate in effect on the date
3 the automobile, truck, trailer, semitrailer, or truck-tractor is
4 delivered to the lessee, except as otherwise provided within this
5 section.

6 (h) In the rental or lease of automobiles, trucks,
7 trailers, semitrailers, and truck-tractors as defined in the act,
8 for periods of one year or more, the lessor may elect not to
9 collect and remit the sales tax on the gross receipts and instead
10 pay a sales tax on the cost of such vehicle. If such election is
11 made, it shall be made pursuant to the following conditions:

12 (i) Notice of the desire to make such election shall
13 be filed with the Tax Commissioner and shall not become effective
14 until the Tax Commissioner is satisfied that the taxpayer has
15 complied with all conditions of this subsection and all rules and
16 regulations of the Tax Commissioner;

17 (ii) Such election when made shall continue in force and
18 effect for a period of not less than two years and thereafter until
19 such time as the lessor elects to terminate the election;

20 (iii) When such election is made, it shall apply to all
21 vehicles of the lessor rented or leased for periods of one year or
22 more except vehicles to be leased to common or contract carriers
23 who provide to the lessor a valid common or contract carrier
24 exemption certificate. If the lessor rents or leases other vehicles
25 for periods of less than one year, such lessor shall maintain his

1 or her books and records and his or her accounting procedure as the
2 Tax Commissioner prescribes; and

3 (iv) The Tax Commissioner by rule and regulation shall
4 prescribe the contents and form of the notice of election, a
5 procedure for the determination of the tax base of vehicles which
6 are under an existing lease at the time such election becomes
7 effective, the method and manner for terminating such election, and
8 such other rules and regulations as may be necessary for the proper
9 administration of this subdivision.

10 (i) The tax imposed by this section on the sales of
11 motor vehicles, semitrailers, and trailers as defined in sections
12 60-339, 60-348, and 60-354 shall be the liability of the purchaser
13 and, with the exception of motor vehicles, semitrailers, and
14 trailers registered pursuant to section 60-3,198, the tax shall
15 be collected by the county treasurer or designated county official
16 as provided in the Motor Vehicle Registration Act at the time
17 the purchaser makes application for the registration of the motor
18 vehicle, semitrailer, or trailer for operation upon the highways
19 of this state. The tax imposed by this section on motor vehicles,
20 semitrailers, and trailers registered pursuant to section 60-3,198
21 shall be collected by the Department of Motor Vehicles at the time
22 the purchaser makes application for the registration of the motor
23 vehicle, semitrailer, or trailer for operation upon the highways
24 of this state. At the time of the sale of any motor vehicle,
25 semitrailer, or trailer, the seller shall (i) state on the sales

1 invoice the dollar amount of the tax imposed under this section
2 and (ii) furnish to the purchaser a certified statement of the
3 transaction, in such form as the Tax Commissioner prescribes,
4 setting forth as a minimum the total sales price, the allowance for
5 any trade-in, and the difference between the two. The sales tax due
6 shall be computed on the difference between the total sales price
7 and the allowance for any trade-in as disclosed by such certified
8 statement. Any seller who willfully understates the amount upon
9 which the sales tax is due shall be subject to a penalty of one
10 thousand dollars. A copy of such certified statement shall also
11 be furnished to the Tax Commissioner. Any seller who fails or
12 refuses to furnish such certified statement shall be guilty of
13 a misdemeanor and shall, upon conviction thereof, be punished by
14 a fine of not less than twenty-five dollars nor more than one
15 hundred dollars. If the seller fails to state on the sales invoice
16 the dollar amount of the tax due, the purchaser shall have the
17 right and authority to rescind any agreement for purchase and
18 to declare the purchase null and void. If the purchaser retains
19 such motor vehicle, semitrailer, or trailer in this state and
20 does not register it for operation on the highways of this state
21 within thirty days of the purchase thereof, the tax imposed by
22 this section shall immediately thereafter be paid by the purchaser
23 to the county treasurer, the designated county official, or the
24 Department of Motor Vehicles. If the tax is not paid on or
25 before the thirtieth day after its purchase, the county treasurer,

1 designated county official, or Department of Motor Vehicles shall
2 also collect from the purchaser interest from the thirtieth day
3 through the date of payment and sales tax penalties as provided in
4 the Nebraska Revenue Act of 1967. The county treasurer, designated
5 county official, or Department of Motor Vehicles shall report and
6 remit the tax so collected to the Tax Commissioner by the fifteenth
7 day of the following month. The county treasurer or designated
8 county official shall deduct and withhold for the use of the county
9 general fund, from all amounts required to be collected under
10 this subsection, the collection fee permitted to be deducted by
11 any retailer collecting the sales tax. The Department of Motor
12 Vehicles shall deduct, withhold, and deposit in the Motor Carrier
13 Division Cash Fund the collection fee permitted to be deducted by
14 any retailer collecting the sales tax. The collection fee shall
15 be forfeited if the county treasurer, designated county official,
16 or Department of Motor Vehicles violates any rule or regulation
17 pertaining to the collection of the use tax.

18 (j)(i) The tax imposed by this section on the sale of a
19 motorboat as defined in section 37-1204 shall be the liability of
20 the purchaser. The tax shall be collected by the county treasurer
21 or designated county official at the time the purchaser makes
22 application for the registration of the motorboat. At the time
23 of the sale of a motorboat, the seller shall (A) state on the
24 sales invoice the dollar amount of the tax imposed under this
25 section and (B) furnish to the purchaser a certified statement of

1 the transaction, in such form as the Tax Commissioner prescribes,
2 setting forth as a minimum the total sales price, the allowance for
3 any trade-in, and the difference between the two. The sales tax due
4 shall be computed on the difference between the total sales price
5 and the allowance for any trade-in as disclosed by such certified
6 statement. Any seller who willfully understates the amount upon
7 which the sales tax is due shall be subject to a penalty of one
8 thousand dollars. A copy of such certified statement shall also
9 be furnished to the Tax Commissioner. Any seller who fails or
10 refuses to furnish such certified statement shall be guilty of a
11 misdemeanor and shall, upon conviction thereof, be punished by a
12 fine of not less than twenty-five dollars nor more than one hundred
13 dollars. If the seller fails to state on the sales invoice the
14 dollar amount of the tax due, the purchaser shall have the right
15 and authority to rescind any agreement for purchase and to declare
16 the purchase null and void. If the purchaser retains such motorboat
17 in this state and does not register it within thirty days of the
18 purchase thereof, the tax imposed by this section shall immediately
19 thereafter be paid by the purchaser to the county treasurer or
20 designated county official. If the tax is not paid on or before
21 the thirtieth day after its purchase, the county treasurer or
22 designated county official shall also collect from the purchaser
23 interest from the thirtieth day through the date of payment and
24 sales tax penalties as provided in the Nebraska Revenue Act of
25 1967. The county treasurer or designated county official shall

1 report and remit the tax so collected to the Tax Commissioner by
2 the fifteenth day of the following month. The county treasurer or
3 designated county official shall deduct and withhold for the use of
4 the county general fund, from all amounts required to be collected
5 under this subsection, the collection fee permitted to be deducted
6 by any retailer collecting the sales tax. The collection fee shall
7 be forfeited if the county treasurer or designated county official
8 violates any rule or regulation pertaining to the collection of the
9 use tax.

10 (ii) In the rental or lease of motorboats, the tax shall
11 be collected by the lessor on the rental or lease price.

12 (k) The Tax Commissioner shall adopt and promulgate
13 necessary rules and regulations for determining the amount subject
14 to the taxes imposed by this section so as to insure that the
15 full amount of any applicable tax is paid in cases in which a
16 sale is made of which a part is subject to the taxes imposed by
17 this section and a part of which is not so subject and a separate
18 accounting is not practical or economical.

19 (2) A use tax is hereby imposed on the storage, use, or
20 other consumption in this state of property purchased, leased, or
21 rented from any retailer and on any transaction the gross receipts
22 of which are subject to tax under subsection (1) of this section
23 on or after June 1, 1967, for storage, use, or other consumption
24 in this state at the rate set as provided in subsection (1) of
25 this section on the sales price of the property or, in the case of

1 leases or rentals, of the lease or rental prices.

2 (a) Every person storing, using, or otherwise consuming
3 in this state property purchased from a retailer or leased or
4 rented from another person for such purpose shall be liable for the
5 use tax at the rate in effect when his or her liability for the
6 use tax becomes certain under the accounting basis used to maintain
7 his or her books and records. His or her liability shall not be
8 extinguished until the use tax has been paid to this state, except
9 that a receipt from a retailer engaged in business in this state
10 or from a retailer who is authorized by the Tax Commissioner, under
11 such rules and regulations as he or she may prescribe, to collect
12 the sales tax and who is, for the purposes of the Nebraska Revenue
13 Act of 1967 relating to the sales tax, regarded as a retailer
14 engaged in business in this state, which receipt is given to the
15 purchaser pursuant to subdivision (b) of this subsection, shall be
16 sufficient to relieve the purchaser from further liability for the
17 tax to which the receipt refers.

18 (b) Every retailer engaged in business in this state and
19 selling, leasing, or renting property for storage, use, or other
20 consumption in this state shall, at the time of making any sale,
21 collect any tax which may be due from the purchaser and shall give
22 to the purchaser, upon request, a receipt therefor in the manner
23 and form prescribed by the Tax Commissioner.

24 (c) The Tax Commissioner, in order to facilitate the
25 proper administration of the use tax, may designate such person or

1 persons as he or she may deem necessary to be use tax collectors
2 and delegate to such persons such authority as is necessary to
3 collect any use tax which is due and payable to the State of
4 Nebraska. The Tax Commissioner may require of all persons so
5 designated a surety bond in favor of the State of Nebraska to
6 insure against any misappropriation of state funds so collected.
7 The Tax Commissioner may require any tax official, city, county, or
8 state, to collect the use tax on behalf of the state. All persons
9 designated to or required to collect the use tax shall account for
10 such collections in the manner prescribed by the Tax Commissioner.
11 Nothing in this subdivision shall be so construed as to prevent the
12 Tax Commissioner or his or her employees from collecting any use
13 taxes due and payable to the State of Nebraska.

14 (d) All persons designated to collect the use tax and all
15 persons required to collect the use tax shall forward the total of
16 such collections to the Tax Commissioner at such time and in such
17 manner as the Tax Commissioner may prescribe. For all use taxes
18 collected prior to October 1, 2002, such collectors of the use tax
19 shall deduct and withhold from the amount of taxes collected two
20 and one-half percent of the first three thousand dollars remitted
21 each month and one-half of one percent of all amounts in excess
22 of three thousand dollars remitted each month as reimbursement
23 for the cost of collecting the tax. For use taxes collected on
24 and after October 1, 2002, such collectors of the use tax shall
25 deduct and withhold from the amount of taxes collected two and

1 one-half percent of the first three thousand dollars remitted each
2 month as reimbursement for the cost of collecting the tax. Any
3 such deduction shall be forfeited to the State of Nebraska if such
4 collector violates any rule, regulation, or directive of the Tax
5 Commissioner.

6 (e) For the purpose of the proper administration of the
7 Nebraska Revenue Act of 1967 and to prevent evasion of the use tax,
8 it shall be presumed that property sold, leased, or rented by any
9 person for delivery in this state is sold, leased, or rented for
10 storage, use, or other consumption in this state until the contrary
11 is established. The burden of proving the contrary is upon the
12 person who purchases, leases, or rents the property.

13 (f) For the purpose of the proper administration of the
14 Nebraska Revenue Act of 1967 and to prevent evasion of the use tax,
15 for the sale of property to an advertising agency which purchases
16 the property as an agent for a disclosed or undisclosed principal,
17 the advertising agency is and remains liable for the sales and
18 use tax on the purchase the same as if the principal had made the
19 purchase directly.

20 Sec. 8. Section 77-2703.04, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 77-2703.04 (1) Except for the telecommunications
23 service defined in subsection (3) of this section, the sale of
24 telecommunications service sold on a call-by-call basis shall be
25 sourced to (a) each level of taxing jurisdiction where the call

1 originates and terminates in that jurisdiction or (b) each level of
2 taxing jurisdiction where the call either originates or terminates
3 and in which the service address is also located.

4 (2) Except for the telecommunications service defined
5 in subsection (3) of this section, a sale of telecommunications
6 service sold on a basis other than a call-by-call basis is sourced
7 to the customer's place of primary use.

8 (3) (a) For mobile telecommunications service provided and
9 billed to a customer by a home service provider:

10 (i) Notwithstanding any other provision of law or any
11 local ordinance or resolution, such mobile telecommunications
12 service is deemed to be provided by the customer's home service
13 provider;

14 (ii) All taxable charges for such mobile
15 telecommunications service shall be subject to tax by the state or
16 other taxing jurisdiction in this state whose territorial limits
17 encompass the customer's place of primary use regardless of where
18 the mobile telecommunications service originates, terminates, or
19 passes through; and

20 (iii) No taxes, charges, or fees may be imposed on a
21 customer with a place of primary use outside this state.

22 (b) In accordance with the federal Mobile
23 Telecommunications Sourcing Act, as such act existed on July 20,
24 2002, the Tax Commissioner may, but is not required to:

25 (i) Provide or contract for a tax assignment data base

1 based upon standards identified in 4 U.S.C. 119, as such section
2 existed on July 20, 2002, with the following conditions:

3 (A) If such data base is provided, a home service
4 provider shall be held harmless for any tax that otherwise would
5 result from any errors or omissions attributable to reliance on
6 such data base; or

7 (B) If such data base is not provided, a home service
8 provider may rely on an enhanced zip code for identifying the
9 proper taxing jurisdictions and shall be held harmless for any
10 tax that otherwise would result from any errors or omissions
11 attributable to reliance on such enhanced zip code if the home
12 service provider identified the taxing jurisdiction through the
13 exercise of due diligence and complied with any procedures that may
14 be adopted by the Tax Commissioner. Any such procedure shall be in
15 accordance with 4 U.S.C. 120, as such section existed on July 20,
16 2002; and

17 (ii) Adopt procedures for correcting errors in the
18 assignment of primary use that are consistent with 4 U.S.C.
19 121, as such section existed on July 20, 2002.

20 (c) If charges for mobile telecommunications service that
21 are not subject to tax are aggregated with and not separately
22 stated on the bill from charges that are subject to tax, the total
23 charge to the customer shall be subject to tax unless the home
24 service provider can reasonably separate charges not subject to tax
25 using the records of the home service provider that are kept in the

1 regular course of business.

2 (d) For purposes of this subsection:

3 (i) Customer means an individual, business, organization,
4 or other person contracting to receive mobile telecommunications
5 service from a home service provider. Customer does not include a
6 reseller of mobile telecommunications service or a serving carrier
7 under an arrangement to serve the customer outside the home service
8 provider's service area;

9 (ii) Home service provider means a telecommunications
10 company as defined in section 86-322 that has contracted with a
11 customer to provide mobile telecommunications service;

12 (iii) Mobile telecommunications service means a wireless
13 communication service carried on between mobile stations or
14 receivers and land stations, and by mobile stations communicating
15 among themselves, and includes (A) both one-way and two-way
16 wireless communication services, (B) a mobile service which
17 provides a regularly interacting group of base, mobile, portable,
18 and associated control and relay stations, whether on an
19 individual, cooperative, or multiple basis for private one-way or
20 two-way land mobile radio communications by eligible users over
21 designated areas of operation, and (C) any personal communication
22 service;

23 (iv) Place of primary use means the street address
24 representative of where the customer's use of mobile
25 telecommunications service primarily occurs. The place of

1 primary use shall be the residential street address or the primary
2 business street address of the customer and shall be within the
3 service area of the home service provider; and

4 (v) Tax means the sales taxes levied under sections
5 13-319, 77-2703, and 77-27,142, the surcharges levied under the
6 Enhanced Wireless 911 Services Act, the Nebraska Telecommunications
7 Universal Service Fund Act, and the Telecommunications Relay System
8 Act, and any other tax levied against the customer based on the
9 amount charged to the customer. Tax does not mean an income tax,
10 property tax, franchise tax, or any other tax levied on the home
11 service provider that is not based on the amount charged to the
12 customer.

13 (4) A sale of post-paid calling service is sourced to
14 the origination point of the telecommunications signal as first
15 identified by either (a) the seller's telecommunications system, or
16 (b) information received by the seller from its service provider,
17 where the system used to transport such signals is not that of the
18 seller.

19 (5) A sale of prepaid calling service is sourced in
20 accordance with section 77-2703.01, except that in the case of
21 a sale of mobile telecommunications service that is a prepaid
22 telecommunications service, the rule provided in section 77-2703.01
23 shall include as an option the location associated with the mobile
24 telephone number.

25 (6) A sale of a private communication service is sourced

1 as follows:

2 (a) Service for a separate charge related to a customer
3 channel termination point is sourced to each level of jurisdiction
4 in which such customer channel termination point is located;

5 (b) Service where all customer termination points are
6 located entirely within one jurisdiction or levels of jurisdiction
7 is sourced in such jurisdiction in which the customer channel
8 termination points are located;

9 (c) Service for segments of a channel between two
10 customer channel termination points located in different
11 jurisdictions and which segments of channel are separately charged
12 is sourced fifty percent in each level of jurisdiction in which the
13 customer channel termination points are located; and

14 (d) Service for segments of a channel located in more
15 than one jurisdiction or levels of jurisdiction and which segments
16 are not separately billed is sourced in each jurisdiction based
17 on the percentage determined by dividing the number of customer
18 channel termination points in such jurisdiction by the total number
19 of customer channel termination points.

20 (7) For purposes of this section:

21 (a) 800 service means a telecommunications service that
22 allows a caller to dial a toll-free number without incurring a
23 charge for the call. The service is typically marketed under
24 the name 800, 855, 866, 877, and 888 toll-free calling, and
25 any subsequent numbers designated by the Federal Communications

1 Commission;

2 (b) 900 service means an inbound toll telecommunications
3 service purchased by a subscriber that allows the subscriber's
4 customers to call in to the subscriber's prerecorded announcement
5 or live service. 900 service does not include the charge
6 for collection services provided by the seller of the
7 telecommunications services to the subscriber or service or product
8 sold by the subscriber to the subscriber's customer. The service is
9 typically marketed under the name 900 service, and any subsequent
10 numbers designated by the Federal Communications Commission;

11 ~~(a)~~ (c) Air-to-ground radiotelephone service means a
12 radio telecommunication service, as that term is defined in 47
13 C.F.R. 22.99, as such regulation existed on January 1, 2003, 2007,
14 in which common carriers are authorized to offer and provide radio
15 telecommunications service for hire to subscribers in aircraft;

16 (d) Ancillary services means services that are associated
17 with or incidental to the provision of telecommunications services,
18 including, but not limited to, detailed telecommunications
19 billings, directory assistance, vertical service, and voice mail
20 services;

21 ~~(b)~~ (e) Call-by-call basis means any method of charging
22 for telecommunications service where the price is measured by
23 individual calls;

24 (f) Coin-operated telephone service means a
25 telecommunications service paid for by inserting money into a

1 telephone accepting direct deposits of money to operate;

2 ~~(e)~~ (g) Communications channel means a physical or
3 virtual path of communications over which signals are transmitted
4 between or among customer channel termination points;

5 (h) Conference bridging service means an ancillary
6 service that links two or more participants of an audio or
7 video conference call and may include the provision of a
8 telephone number. Conference bridging service does not include the
9 telecommunications services used to reach the conference bridge;

10 ~~(d)~~ (i) Customer means the person or entity that
11 contracts with the seller of telecommunications service. If the
12 end user of telecommunications service is not the contracting
13 party, the end user of the telecommunications service is the
14 customer of the telecommunications service, but this sentence only
15 applies for the purpose of sourcing sales of telecommunications
16 service under this section. Customer does not include a reseller of
17 telecommunications service or for mobile telecommunications service
18 of a serving carrier under an agreement to serve the customer
19 outside the home service provider's licensed service area;

20 ~~(e)~~ (j) Customer channel termination point means the
21 location where the customer either inputs or receives the
22 communications;

23 (k) Detailed telecommunications billing service means an
24 ancillary service of separately stating information pertaining to
25 individual calls on a customer's billing statement;

1 (l) Directory assistance means an ancillary service of
2 providing telephone number information and address information;

3 ~~(f)~~ (m) End user means the person who utilizes the
4 telecommunications service. In the case of an entity, end user
5 means the individual who utilizes the service on behalf of the
6 entity;

7 (n) Fixed wireless service means a telecommunications
8 service that provides radio communication between fixed points;

9 (o) International means a telecommunications service that
10 originates or terminates in the United States and terminates or
11 originates outside the United States, respectively. United States
12 includes the District of Columbia or a United States territory or
13 possession;

14 (p) Interstate means a telecommunications service that
15 originates in one state of the United States, or a territory or
16 possession of the United States, and terminates in a different
17 state, territory, or possession of the United States;

18 (q) Intrastate means a telecommunications service that
19 originates in one state of the United States, or a territory or
20 possession of the United States, and terminates in the same state,
21 territory, or possession of the United States;

22 (r) Mobile wireless service means a telecommunications
23 service that is transmitted, conveyed, or routed regardless of the
24 technology used, whereby the origination and termination points of
25 the transmission, conveyance, or routing are not fixed, including,

1 by way of example only, telecommunications services that are
2 provided by a commercial mobile radio service provider;

3 (s) Paging service means a telecommunications service
4 that provides transmission of coded radio signals for the purpose
5 of activating specific pagers. Such transmission may include
6 messages and sounds;

7 (t) Pay telephone services means a telecommunications
8 service provided through pay telephones;

9 ~~(g)~~ (u) Post-paid calling service means the
10 telecommunications service obtained by making a payment on
11 a call-by-call basis either through the use of a credit card
12 or payment mechanism, such as a bank card, travel card, credit
13 card, or debit card, or by a charge made to a telephone number
14 which is not associated with the origination or termination of the
15 telecommunications service. A post-paid calling service includes
16 a telecommunications service, except a prepaid wireless calling
17 service, that would be a prepaid calling service except it is not
18 exclusively a telecommunications service;

19 ~~(h)~~ (v) Prepaid calling service means the right to
20 access exclusively telecommunications service, which is paid for in
21 advance and which enables the origination of calls using an access
22 number or authorization code, whether manually or electronically
23 dialed, and that is sold in predetermined units or dollars of which
24 the number declines with use in a known amount;

25 (w) Prepaid wireless calling service means a

1 telecommunications service that provides the right to utilize
2 mobile wireless service as well as other nontelecommunications
3 services, including the download of digital products delivered
4 electronically, content, and ancillary services, which must be paid
5 for in advance, that is sold in predetermined units of dollars or
6 which the number declines with use in a known amount;

7 ~~(i)~~ (x) Private communication service means a
8 telecommunications service that entitles the customer to exclusive
9 or priority use of a communications channel or group of channels
10 between or among termination points, regardless of the manner
11 in which such channel or channels are connected, and includes
12 switching capacity, extension lines, stations, and any other
13 associated services that are provided in connection with the use
14 of such channel or channels; and

15 (y) Residential telecommunications service means a
16 telecommunications service or ancillary services provided to an
17 individual for personal use at a residential address, including
18 an individual dwelling unit such as an apartment. In the case of
19 institutions where individuals reside, such as schools or nursing
20 homes, telecommunications service is considered residential if it
21 is provided to and paid for by an individual resident rather than
22 the institution;

23 ~~(j)~~ (z) Service address means the location of the
24 telecommunications equipment to which a customer's call is charged
25 and from which the call originates or terminates, regardless of

1 where the call is billed or paid. If this location is not known,
2 service address means the origination point of the signal of the
3 telecommunications service first identified either by the seller's
4 telecommunications system, or in information received by the seller
5 from its service provider, where the system used to transport such
6 signals is not that of the seller. If both locations are not known,
7 the service address means the location of the customer's place of
8 primary use;

9 (aa) Telecommunications service means the electronic
10 transmission, conveyance, or routing of voice, data, audio, video,
11 or any other information or signals to a point, or between or among
12 points. Telecommunications service includes such transmission,
13 conveyance, or routing in which computer processing applications
14 are used to act on the form, code, or protocol of the content for
15 purposes of transmission, conveyance, or routing without regard to
16 whether such service is referred to as voice over Internet protocol
17 services or is classified by the Federal Communications Commission
18 as enhanced or value-added. Telecommunications service does not
19 include:

20 (i) Data processing and information services that allow
21 data to be generated, acquired, stored, processed, or retrieved and
22 delivered by an electronic transmission to a purchaser when such
23 purchaser's primary purpose for the underlying transaction is the
24 processed data or information;

25 (ii) Installation or maintenance of wiring or equipment

1 on a customer's premises;

2 (iii) Tangible personal property;

3 (iv) Advertising, including, but not limited to,
4 directory advertising;

5 (v) Billing and collection services provided to third
6 parties;

7 (vi) Internet access service;

8 (vii) Radio and television audio and video programming
9 services, regardless of the medium, including the furnishing of
10 transmission, conveyance, and routing of such services by the
11 programming service provider. Radio and television audio and video
12 programming services shall include, but not be limited to, cable
13 service as defined in 47 U.S.C. 522, as such section existed on
14 January 1, 2007, and audio and video programming services delivered
15 by providers of commercial mobile radio service as defined in 47
16 C.F.R. 20.3, as such regulation existed on January 1, 2007;

17 (viii) Ancillary services; or

18 (ix) Digital products delivered electronically,
19 including, but not limited to, software, music, video, reading
20 materials, or ring tones;

21 (bb) Value-added, non-voice data service means a service
22 that otherwise meets the definition of telecommunications services
23 in which computer processing applications are used to act on
24 the form, content, code, or protocol of the information or data
25 primarily for a purpose other than transmission, conveyance, or

1 routing;

2 (cc) Vertical service means an ancillary service that is
3 offered in connection with one or more telecommunications services,
4 which offers advanced calling features that allow customers to
5 identify callers and to manage multiple calls and call connections,
6 including conference bridging services; and

7 (dd) Voice mail service means an ancillary service that
8 enables the customer to store, send, or receive recorded messages.
9 Voice mail service does not include any vertical services that the
10 customer may be required to have in order to utilize the voice mail
11 service.

12 Sec. 9. Section 77-2711, Revised Statutes Cumulative
13 Supplement, 2006, is amended to read:

14 77-2711 (1)(a) The Tax Commissioner shall enforce
15 sections 77-2701.04 to 77-2713 and may prescribe, adopt, and
16 enforce rules and regulations relating to the administration and
17 enforcement of such sections.

18 (b) The Tax Commissioner may prescribe the extent to
19 which any ruling or regulation shall be applied without retroactive
20 effect.

21 (2) The Tax Commissioner may employ accountants,
22 auditors, investigators, assistants, and clerks necessary for the
23 efficient administration of the Nebraska Revenue Act of 1967 and
24 may delegate authority to his or her representatives to conduct
25 hearings, prescribe regulations, or perform any other duties

1 imposed by such act.

2 (3) (a) Every seller, every retailer, and every person
3 storing, using, or otherwise consuming in this state property
4 purchased from a retailer shall keep such records, receipts,
5 invoices, and other pertinent papers in such form as the Tax
6 Commissioner may reasonably require.

7 (b) Every such seller, retailer, or person shall keep
8 such records for not less than three years from the making of such
9 records unless the Tax Commissioner in writing sooner authorized
10 their destruction.

11 (4) The Tax Commissioner or any person authorized in
12 writing by him or her may examine the books, papers, records, and
13 equipment of any person selling property and any person liable for
14 the use tax and may investigate the character of the business of
15 the person in order to verify the accuracy of any return made or,
16 if no return is made by the person, to ascertain and determine
17 the amount required to be paid. In the examination of any person
18 selling property or of any person liable for the use tax, an
19 inquiry shall be made as to the accuracy of the reporting of city
20 sales and use taxes for which the person is liable under the Local
21 Option Revenue Act or sections 13-319, 13-324, and 13-2813 and
22 the accuracy of the allocation made between the various counties,
23 cities, villages, and municipal counties of the tax due. The Tax
24 Commissioner may make or cause to be made copies of resale or
25 exemption certificates and may pay a reasonable amount to the

1 person having custody of the records for providing such copies.

2 (5) The taxpayer shall have the right to keep or store
3 his or her records at a point outside this state and shall make his
4 or her records available to the Tax Commissioner at all times.

5 (6) In administration of the use tax, the Tax
6 Commissioner may require the filing of reports by any person or
7 class of persons having in his, her, or their possession or custody
8 information relating to sales of property, the storage, use, or
9 other consumption of which is subject to the tax. The report shall
10 be filed when the Tax Commissioner requires and shall set forth the
11 names and addresses of purchasers of the property, the sales price
12 of the property, the date of sale, and such other information as
13 the Tax Commissioner may require.

14 (7) It shall be a Class I misdemeanor for the Tax
15 Commissioner or any official or employee of the Tax Commissioner,
16 the State Treasurer, or the Department of Administrative Services
17 to make known in any manner whatever the business affairs,
18 operations, or information obtained by an investigation of records
19 and activities of any retailer or any other person visited
20 or examined in the discharge of official duty or the amount
21 or source of income, profits, losses, expenditures, or any
22 particular thereof, set forth or disclosed in any return, or
23 to permit any return or copy thereof, or any book containing
24 any abstract or particulars thereof to be seen or examined by
25 any person not connected with the Tax Commissioner. Nothing in

1 this section shall be construed to prohibit (a) the delivery to
2 a taxpayer, his or her duly authorized representative, or his
3 or her successors, receivers, trustees, executors, administrators,
4 assignees, or guarantors, if directly interested, of a certified
5 copy of any return or report in connection with his or her tax,
6 (b) the publication of statistics so classified as to prevent
7 the identification of particular reports or returns and the items
8 thereof, (c) the inspection by the Attorney General, other legal
9 representative of the state, or county attorney of the reports
10 or returns of any taxpayer when either (i) information on the
11 reports or returns is considered by the Attorney General to be
12 relevant to any action or proceeding instituted by the taxpayer
13 or against whom an action or proceeding is being considered or
14 has been commenced by any state agency or the county or (ii) the
15 taxpayer has instituted an action to review the tax based thereon
16 or an action or proceeding against the taxpayer for collection of
17 tax or failure to comply with the Nebraska Revenue Act of 1967 is
18 being considered or has been commenced, (d) the furnishing of any
19 information to the United States Government or to states allowing
20 similar privileges to the Tax Commissioner, (e) the disclosure of
21 information and records to a collection agency contracting with the
22 Tax Commissioner pursuant to sections 77-377.01 to 77-377.04, (f)
23 the disclosure to another party to a transaction of information
24 and records concerning the transaction between the taxpayer and
25 the other party, or (g) the disclosure of information pursuant to

1 section 77-27,195 or ~~section~~ 77-5731.

2 (8) Notwithstanding the provisions of subsection (7) of
3 this section, the Tax Commissioner may permit the Postal Inspector
4 of the United States Postal Service or his or her delegates to
5 inspect the reports or returns of any person filed pursuant to the
6 Nebraska Revenue Act of 1967 when information on the reports or
7 returns is relevant to any action or proceeding instituted or being
8 considered by the United States Postal Service against such person
9 for the fraudulent use of the mails to carry and deliver false and
10 fraudulent tax returns to the Tax Commissioner with the intent to
11 defraud the State of Nebraska or to evade the payment of Nebraska
12 state taxes.

13 (9) Notwithstanding the provisions of subsection (7) of
14 this section, the Tax Commissioner may permit other tax officials
15 of this state to inspect the tax returns, reports, and applications
16 filed under sections 77-2701.04 to 77-2713, but such inspection
17 shall be permitted only for purposes of enforcing a tax law and
18 only to the extent and under the conditions prescribed by the rules
19 and regulations of the Tax Commissioner.

20 (10) Notwithstanding the provisions of subsection (7)
21 of this section, the Tax Commissioner may, upon request, provide
22 the county board of any county which has exercised the authority
23 granted by section 81-1254 with a list of the names and addresses
24 of the hotels located within the county for which lodging sales tax
25 returns have been filed or for which lodging sales taxes have been

1 remitted for the county's County Visitors Promotion Fund under the
2 Nebraska Visitors Development Act.

3 The information provided by the Tax Commissioner shall
4 indicate only the names and addresses of the hotels located within
5 the requesting county for which lodging sales tax returns have been
6 filed for a specified period and the fact that lodging sales taxes
7 remitted by or on behalf of the hotel have constituted a portion of
8 the total sum remitted by the state to the county for a specified
9 period under the provisions of the Nebraska Visitors Development
10 Act. No additional information shall be revealed.

11 (11) (a) Notwithstanding the provisions of subsection (7)
12 of this section, the Tax Commissioner shall, upon written request
13 by the Auditor of Public Accounts or the Legislative Performance
14 Audit Committee, make tax returns and tax return information open
15 to inspection by or disclosure to Auditor of Public Accounts or
16 Legislative Performance Audit Section employees for the purpose of
17 and to the extent necessary in making an audit of the Department
18 of Revenue pursuant to section 50-1205 or 84-304. Confidential
19 tax returns and tax return information shall be audited only upon
20 the premises of the Department of Revenue. All audit workpapers
21 pertaining to the audit of the Department of Revenue shall be
22 stored in a secure place in the Department of Revenue.

23 (b) No employee of the Auditor of Public Accounts or
24 Legislative Performance Audit Section shall disclose to any person,
25 other than another Auditor of Public Accounts or Legislative

1 Performance Audit Section employee whose official duties require
2 such disclosure or as provided in subsections (2) and (3) of
3 section 50-1213, any return or return information described in the
4 Nebraska Revenue Act of 1967 in a form which can be associated
5 with or otherwise identify, directly or indirectly, a particular
6 taxpayer.

7 (c) Any person who violates the provisions of this
8 subsection shall be guilty of a Class I misdemeanor. For purposes
9 of this subsection, employee includes a former Auditor of Public
10 Accounts or Legislative Performance Audit Section employee.

11 (12) For purposes of subsections (11) and (12) of this
12 section:

13 (a) Disclosure means the making known to any person in
14 any manner a tax return or return information;

15 (b) Return information means:

16 (i) A taxpayer's identification number and (A) the
17 nature, source, or amount of his or her income, payments, receipts,
18 deductions, exemptions, credits, assets, liabilities, net worth,
19 tax liability, tax withheld, deficiencies, overassessments, or tax
20 payments, whether the taxpayer's return was, is being, or will be
21 examined or subject to other investigation or processing or (B) any
22 other data received by, recorded by, prepared by, furnished to, or
23 collected by the Tax Commissioner with respect to a return or the
24 determination of the existence or possible existence of liability
25 or the amount of liability of any person for any tax, penalty,

1 interest, fine, forfeiture, or other imposition or offense; and

2 (ii) Any part of any written determination or any
3 background file document relating to such written determination;
4 and

5 (c) Tax return or return means any tax or information
6 return or claim for refund required by, provided for, or permitted
7 under sections 77-2701 to 77-2713 which is filed with the Tax
8 Commissioner by, on behalf of, or with respect to any person
9 and any amendment or supplement thereto, including supporting
10 schedules, attachments, or lists which are supplemental to or part
11 of the filed return.

12 (13) In all proceedings under the Nebraska Revenue Act
13 of 1967, the Tax Commissioner may act for and on behalf of the
14 people of the State of Nebraska. The Tax Commissioner in his or
15 her discretion may waive all or part of any penalties provided by
16 the provisions of such act, but may not waive the minimum interest
17 on delinquent taxes specified in section 45-104.02, as such rate
18 may from time to time be adjusted, except interest on use taxes
19 voluntarily reported by an individual.

20 (14)(a) The purpose of this subsection is to set forth
21 the state's policy for the protection of the confidentiality
22 rights of all participants in the system operated pursuant to
23 the streamlined sales and use tax agreement and of the privacy
24 interests of consumers who deal with model 1 sellers.

25 (b) For purposes of this subsection:

1 (i) Anonymous data means information that does not
2 identify a person;

3 (ii) Confidential taxpayer information means all
4 information that is protected under a member state's laws,
5 regulations, and privileges; and

6 (iii) Personally identifiable information means
7 information that identifies a person.

8 (c) The state agrees that a fundamental precept for model
9 1 sellers is to preserve the privacy of consumers by protecting
10 their anonymity. With very limited exceptions, a certified service
11 provider shall perform its tax calculation, remittance, and
12 reporting functions without retaining the personally identifiable
13 information of consumers.

14 (d) The governing board of the member states in the
15 streamlined sales and use tax agreement may certify a certified
16 service provider only if that certified service provider certifies
17 that:

18 (i) Its system has been designed and tested to ensure
19 that the fundamental precept of anonymity is respected;

20 (ii) Personally identifiable information is only used and
21 retained to the extent necessary for the administration of model 1
22 with respect to exempt purchasers;

23 (iii) It provides consumers clear and conspicuous
24 notice of its information practices, including what information
25 it collects, how it collects the information, how it uses the

1 information, how long, if at all, it retains the information, and
2 whether it discloses the information to member states. Such notice
3 shall be satisfied by a written privacy policy statement accessible
4 by the public on the web site of the certified service provider;

5 (iv) Its collection, use, and retention of personally
6 identifiable information is limited to that required by the member
7 states to ensure the validity of exemptions from taxation that are
8 claimed by reason of a consumer's status or the intended use of the
9 goods or services purchased; and

10 (v) It provides adequate technical, physical, and
11 administrative safeguards so as to protect personally identifiable
12 information from unauthorized access and disclosure.

13 (e) The state shall provide public notification to
14 consumers, including exempt purchasers, of the state's practices
15 relating to the collection, use, and retention of personally
16 identifiable information.

17 (f) When any personally identifiable information that
18 has been collected and retained is no longer required for the
19 purposes set forth in subdivision (14)(d)(iv) of this section, such
20 information shall no longer be retained by the member states.

21 (g) When personally identifiable information regarding an
22 individual is retained by or on behalf of the state, it shall
23 provide reasonable access by such individual to his or her own
24 information in the state's possession and a right to correct any
25 inaccurately recorded information.

1 (h) If anyone other than a member state, or a person
2 authorized by that state's law or the agreement, seeks to discover
3 personally identifiable information, the state from whom the
4 information is sought should make a reasonable and timely effort to
5 notify the individual of such request.

6 (i) This privacy policy is subject to enforcement by the
7 Attorney General.

8 (j) All other laws and regulations regarding the
9 collection, use, and maintenance of confidential taxpayer
10 information remain fully applicable and binding. Without
11 limitation, this subsection does not enlarge or limit the state's
12 authority to:

13 (i) Conduct audits or other reviews as provided under the
14 agreement and state law;

15 (ii) Provide records pursuant to the federal Freedom of
16 Information Act, disclosure laws with governmental agencies, or
17 other regulations;

18 (iii) Prevent, consistent with state law, disclosure of
19 confidential taxpayer information;

20 (iv) Prevent, consistent with federal law, disclosure or
21 misuse of federal return information obtained under a disclosure
22 agreement with the Internal Revenue Service; and

23 (v) Collect, disclose, disseminate, or otherwise use
24 anonymous data for governmental purposes.

25 Sec. 10. Section 77-2712.03, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 77-2712.03 (1) The streamlined sales and use tax
3 agreement, as adopted by the streamlined sales tax implementing
4 states on November 12, 2002, including amendments through December
5 14, 2006, is hereby ratified by the Legislature. The Governor
6 shall enter into the agreement with one or more states to simplify
7 and modernize sales and use tax administration in order to
8 substantially reduce the burden of tax compliance for all sellers
9 and for all types of commerce. In furtherance of the agreement,
10 the Department of Revenue is authorized to act jointly with other
11 states that are members under Articles VII or VIII of the agreement
12 to establish standards for certification of a certified service
13 provider and certified automated system and establish performance
14 standards for multistate sellers. The department is further
15 authorized to take other actions permissible under law reasonably
16 required to implement the provisions set forth in the agreement.
17 Other actions authorized by this section include, but are not
18 limited to, the adoption and promulgation of rules and regulations
19 and the joint procurement, with other member states, of goods and
20 services in furtherance of the agreement.

21 (2) The Tax Commissioner or his or her designee and two
22 representatives of the Legislature appointed by the Executive Board
23 of the Legislative Council are authorized to represent Nebraska
24 before the other member states under the agreement. The state
25 also agrees to participate in and comply with the procedures of

1 and decisions made by the governing board of the member states.
2 These provisions of the agreement include the creation of the
3 organization as provided in Article VII of the agreement, the
4 requirements for state entry and withdrawal as provided in Article
5 VIII of the agreement, amendments to the agreement as provided in
6 Article IX of the agreement, and a dispute resolution process as
7 provided in Article X of the agreement.

8 Sec. 11. Section 77-2712.05, Revised Statutes Cumulative
9 Supplement, 2006, is amended to read:

10 77-2712.05 By agreeing to the terms of the streamlined
11 sales and use tax agreement, this state agrees to abide by the
12 following requirements:

13 (1) Uniform state rate. The state shall comply with
14 restrictions to achieve over time more uniform state rates through
15 the following:

16 (a) Limiting the number of state rates;

17 (b) Limiting the application of maximums on the amount of
18 state tax that is due on a transaction; and

19 (c) Limiting the application of thresholds on the
20 application of state tax;

21 (2) Uniform standards. The state hereby establishes
22 uniform standards for the following:

23 (a) Sourcing of transactions to taxing jurisdictions as
24 provided in sections 77-2703.01 to 77-2703.04;

25 (b) Administration of exempt sales as set out by the

1 agreement and using procedures as determined by the governing
2 board;

3 (c) Allowances a seller can take for bad debts as
4 provided in section 77-2708; and

5 (d) Sales and use tax returns and remittances. To comply
6 with the agreement, the Tax Commissioner shall:

7 (i) Require only one remittance for each return except
8 as provided in this subdivision. If any additional remittance is
9 required, it may only be required from retailers that collect more
10 than thirty thousand dollars in sales and use taxes in the state
11 during the preceding calendar year as provided in this subdivision.
12 The amount of any additional remittance may be determined through
13 a calculation method rather than actual collections. Any additional
14 remittance shall not require the filing of an additional return;

15 (ii) Require, at his or her discretion, all remittances
16 from sellers under models 1, 2, and 3 to be remitted
17 electronically;

18 (iii) Allow for electronic payments by both automated
19 clearinghouse credit and debit;

20 (iv) Provide an alternative method for making same day
21 payments if an electronic funds transfer fails;

22 (v) Provide that if a due date falls on a legal banking
23 holiday, the taxes are due to that state on the next succeeding
24 business day; and

25 (vi) Require that any data that accompanies a remittance

1 be formatted using uniform tax type and payment type codes approved
2 by the governing board of the member states to the streamlined
3 sales and use tax agreement;

4 (3) Uniform definitions. (a) The state shall utilize the
5 uniform definitions of sales and use tax terms as provided in the
6 agreement. The definitions enable Nebraska to preserve its ability
7 to make taxability and exemption choices not inconsistent with the
8 uniform definitions.

9 (b) The state may enact a product-based exemption without
10 restriction if the agreement does not have a definition for the
11 product or for a term that includes the product. If the agreement
12 has a definition for the product or for a term that includes
13 the product, the state may exempt all items included within the
14 definition but shall not exempt only part of the items included
15 within the definition unless the agreement sets out the exemption
16 for part of the items as an acceptable variation.

17 (c) The state may enact an entity-based or a use-based
18 exemption without restriction if the agreement does not have a
19 definition for the product whose use or purchase by a specific
20 entity is exempt or for a term that includes the product. If the
21 agreement has a definition for the product whose use or specific
22 purchase is exempt, states may enact an entity-based or a use-based
23 exemption that applies to that product as long as the exemption
24 utilizes the agreement definition of the product. If the agreement
25 does not have a definition for the product whose use or specific

1 purchase is exempt but has a definition for a term that includes
2 the product, states may enact an entity-based or a use-based
3 exemption for the product without restriction.

4 (d) For purposes of complying with the requirements in
5 this section, the inclusion of a product within the definition of
6 tangible personal property is disregarded;

7 (4) Central registration. The state shall participate in
8 an electronic central registration system that allows a seller to
9 register to collect and remit sales and use taxes for all member
10 states. Under the system:

11 (a) A retailer registering under the agreement is
12 registered in this state;

13 (b) The state agrees not to require the payment of any
14 registration fees or other charges for a retailer to register in
15 the state if the retailer has no legal requirement to register;

16 (c) A written signature from the retailer is not
17 required;

18 (d) An agent may register a retailer under uniform
19 procedures adopted by the member states pursuant to the agreement;

20 (e) A retailer may cancel its registration under the
21 system at any time under uniform procedures adopted by the
22 governing board. Cancellation does not relieve the retailer of its
23 liability for remitting to the proper states any taxes collected;

24 (f) When registering, the retailer that is registered
25 under the agreement may select one of the following methods of

1 remittances or other method allowed by state law to remit the taxes
2 collected:

3 (i) Model 1, wherein a seller selects a certified service
4 provider as an agent to perform all the seller's sales or use tax
5 functions, other than the seller's obligation to remit tax on its
6 own purchases;

7 (ii) Model 2, wherein a seller selects a certified
8 automated system to use which calculates the amount of tax due on a
9 transaction; and

10 (iii) Model 3, wherein a seller utilizes its own
11 proprietary automated sales tax system that has been certified
12 as a certified automated system; and

13 (g) Sellers who register within twelve months after this
14 state's first approval of a certified service provider are relieved
15 from liability, including the local option tax, for tax not
16 collected or paid if the seller was not registered between October
17 1, 2004, and September 30, 2005. Such relief from liability shall
18 be in accordance with the terms of the agreement;

19 (5) No nexus attribution. The state agrees that
20 registration with the central registration system and the
21 collection of sales and use taxes in the state will not be used as
22 a factor in determining whether the seller has nexus with the state
23 for any tax at any time;

24 (6) Local sales and use taxes. The agreement requires
25 the reduction of the burdens of complying with local sales and use

1 taxes as provided in sections 13-319, 13-324, 13-326, 77-2701.03,
2 77-27,142, 77-27,143, and 77-27,144 that require the following:

3 (a) No variation between the state and local tax bases;

4 (b) Statewide administration of all sales and use taxes
5 levied by local jurisdictions within the state so that sellers
6 collecting and remitting these taxes will not have to register or
7 file returns with, remit funds to, or be subject to independent
8 audits from local taxing jurisdictions;

9 (c) Limitations on the frequency of changes in the local
10 sales and use tax rates and setting effective dates for the
11 application of local jurisdictional boundary changes to local sales
12 and use taxes; and

13 (d) Uniform notice of changes in local sales and use
14 tax rates and of changes in the boundaries of local taxing
15 jurisdictions;

16 (7) Complete a taxability matrix approved by the
17 governing board. (a) Notice of changes in the taxability of the
18 products or services listed will be provided as required by the
19 governing board.

20 (b) The entries in the matrix shall be provided and
21 maintained in a data base that is in a downloadable format approved
22 by the governing board.

23 (c) Sellers, model 2 sellers, and certified service
24 providers are relieved from liability, including the local option
25 tax, for having charged and collected the incorrect amount of sales

1 or use tax resulting from the seller or certified service provider
2 relying on erroneous data provided by the member state in the
3 taxability matrix or for relying on product-based classifications
4 that have been reviewed and approved by the state. The state shall
5 notify the certified service provider or model 2 seller if an item
6 or transaction is incorrectly classified as to its taxability;

7 (8) Monetary allowances. The state agrees to allow any
8 monetary allowances that are to be provided by the states to
9 sellers or certified service providers in exchange for collecting
10 sales and use taxes as provided in Article VI of the agreement;

11 (9) State compliance. The agreement requires the state to
12 certify compliance with the terms of the agreement prior to joining
13 and to maintain compliance, under the laws of the member state,
14 with all provisions of the agreement while a member;

15 (10) Consumer privacy. The state hereby adopts a uniform
16 policy for certified service providers that protects the privacy of
17 consumers and maintains the confidentiality of tax information as
18 provided in section 77-2711; and

19 (11) Advisory councils. The state agrees to the
20 ~~appointment~~ recognition of an advisory council of private-sector
21 representatives and an advisory council of member and nonmember
22 state representatives to consult with in the administration of the
23 agreement.

24 Sec. 12. Section 77-2753, Revised Statutes Cumulative
25 Supplement, 2006, is amended to read:

1 77-2753 ~~(1)~~ (1) (a) Every employer and payor maintaining
2 an office or transacting business within this state and making
3 payment of any wages or other payments as defined in subsection
4 (5) of this section which are taxable under the Nebraska Revenue
5 Act of 1967 to any individual shall deduct and withhold from
6 such wages for each payroll period and from such payments a tax
7 computed in such manner as to result, so far as practicable, in
8 withholding from the employee's wages and payments to the payee
9 during each calendar year an amount substantially equivalent to the
10 tax reasonably estimated to be due from the employee or payee under
11 such act with respect to the amount of such wages and payments
12 included in his or her taxable income during the calendar year. The
13 method of determining the amount to be withheld shall be prescribed
14 by rules and regulations of the Tax Commissioner. Such rules and
15 regulations may allow withholding to be computed at a percentage
16 of the federal withholding for gambling winnings or supplemental
17 payments, including bonuses, commissions, overtime pay, and sales
18 awards which are not paid at the same time as other wages. Any
19 withholding tables prescribed by the Tax Commissioner shall be
20 provided to the budget division of the Department of Administrative
21 Services and the Legislative Fiscal Analyst for review at least
22 sixty days before the tables become effective.

23 (b) Notwithstanding the amount of federal withholding or
24 the rules and regulations of the Department of Revenue determining
25 the amount of withholding, every employer and payor employing

1 twenty-five or more employees shall withhold at least three
2 percent of the gross wages minus tax qualified deductions of
3 each employee unless the employee provides satisfactory evidence
4 that a lesser amount of withholding is justified in the employee's
5 particular circumstances. Such satisfactory evidence may include
6 birth certificates or social security information for dependents
7 or other evidence that reasonably assures the employer that the
8 employee is not improperly or fraudulently evading or defeating the
9 income tax by reducing or eliminating withholding.

10 (2) (a) Every payor who is either (i) making a payment or
11 payments in excess of five thousand dollars or (ii) maintaining
12 an office or transacting business within this state and making
13 a payment or payments related to such business in excess of six
14 hundred dollars, and such payment or payments are for personal
15 services performed or to be performed substantially within this
16 state, to a nonresident individual, other than an employee, who
17 is not subject to withholding on such payment under the Internal
18 Revenue Code or a corporation, partnership, or limited liability
19 company described in subdivision (c) of this subsection, shall
20 be deemed an employer, and the individual performing the personal
21 services shall be deemed an employee for the purposes of this
22 section. The payor shall deduct and withhold from such payments
23 the percentage of such payments prescribed in subdivision (b) of
24 this subsection. If the individual performing the personal services
25 provides the payor with a statement of the expenses reasonably

1 related to the personal services, the total payment or payments may
2 be reduced by the total expenses before computing the amount to
3 deduct and withhold, except that such reduction shall not be more
4 than fifty percent of such payment or payments.

5 (b) For any payment or payments for the same service,
6 award, or purse that totals less than twenty-eight thousand
7 dollars, the percentage deducted from such payment or payments
8 pursuant to this subsection shall be four percent, and for all
9 other payments, the percentage shall be six percent.

10 (c) For any corporation, partnership, or limited
11 liability company that receives compensation for personal services
12 in this state and of which all or substantially all of the
13 shareholders, partners, or members are the individuals performing
14 the personal services, including, but not limited to, individual
15 athletes, entertainers, performers, or public speakers performing
16 such personal services, such compensation shall be deemed wages of
17 the individuals performing the personal services and subject to
18 the income tax imposed on individuals by the Nebraska Revenue Act
19 of 1967.

20 (d) The withholding required by this subsection shall
21 not apply to any payment to a nonresident alien, corporation,
22 partnership, or limited liability company if such individual,
23 shareholder, partner, or member provides the payor with a statement
24 that the income earned is not subject to tax because of a treaty
25 obligation of the United States.

1 (3) The Tax Commissioner may enter into agreements with
2 the tax departments of other states, which require income tax to
3 be withheld from the payment of wages, salaries, and such other
4 payments, so as to govern the amounts to be withheld from the wages
5 and salaries of and other payments to residents of such states.
6 Such agreements may provide for recognition of anticipated tax
7 credits in determining the amounts to be withheld and, under rules
8 and regulations adopted and promulgated by the Tax Commissioner,
9 may relieve employers and payors in this state from withholding
10 income tax on wages, salaries, and such other payments paid
11 to nonresident employees and payees. The agreements authorized
12 by this subsection shall be subject to the condition that the
13 tax department of such other states grant similar treatment to
14 residents of this state.

15 (4) The Tax Commissioner shall enter into an agreement
16 with the United States Office of Personnel Management for the
17 withholding of income tax imposed on individuals by the Nebraska
18 Revenue Act of 1967 on civil service annuity payments for those
19 recipients who voluntarily request withholding. The agreement shall
20 be pursuant to 5 U.S.C. 8345 and the rules and regulations adopted
21 and promulgated by the Tax Commissioner.

22 (5) Wages and other payments subject to withholding shall
23 mean payments that are subject to withholding under the Internal
24 Revenue Code of 1986 and are (a) payments made by employers to
25 employees, except such payments subject to 26 U.S.C. 3406, (b)

1 payments of gambling winnings, or (c) pension or annuity payments
2 when the recipient has requested the payor to withhold from such
3 payments.

4 Sec. 13. Section 77-2756, Revised Statutes Cumulative
5 Supplement, 2006, is amended to read:

6 77-2756 (1) Except as provided in subsection (2) of this
7 section, every employer or payor required to deduct and withhold
8 income tax under the Nebraska Revenue Act of 1967 shall, for each
9 calendar quarter, on or before the last day of the month following
10 the close of such calendar quarter, file a withholding return
11 as prescribed by the Tax Commissioner and pay over to the Tax
12 Commissioner or to a depository designated by the Tax Commissioner
13 the taxes so required to be deducted and withheld, ~~except that~~
14 ~~for the fourth quarter of the calendar year, the employer or payor~~
15 ~~shall also file on or before March 15 of the succeeding year a~~
16 ~~copy of each statement furnished by such employer or payor to~~
17 ~~each employee or payee with respect to taxes withheld on wages or~~
18 ~~payments subject to withholding.~~ When the aggregate amount required
19 to be deducted and withheld by any employer or payor for either the
20 first or second month of a calendar quarter exceeds five hundred
21 dollars, the employer or payor shall, by the fifteenth day of
22 the succeeding month, pay over such aggregate amount to the Tax
23 Commissioner or to a depository designated by the Tax Commissioner.
24 The amount so paid shall be allowed as a credit against the
25 liability shown on the employer's or payor's quarterly withholding

1 return required by this section. The Tax Commissioner may, by rule
2 and regulation, provide for the filing of returns and the payment
3 of the tax deducted and withheld on other than a quarterly basis.

4 (2) When the aggregate amount required to be deducted
5 and withheld by any employer or payor for the entire calendar year
6 is less than five hundred dollars or the employer or payor is
7 allowed to file federal withholding returns annually, the employer
8 or payor shall, for each calendar year, on or before the last day
9 of the month following the close of such calendar year, file a
10 withholding return as prescribed by the Tax Commissioner and pay
11 over to the Tax Commissioner or to a depository designated by the
12 Tax Commissioner the taxes so required to be deducted and withheld.
13 ~~7 and the employer or payor shall also file on or before March 15~~
14 ~~of the succeeding year a copy of each statement furnished by such~~
15 ~~employer or payor to each employee or payee with respect to taxes~~
16 ~~withheld on wages or payments subject to withholding.~~ The employer
17 or payor may elect or the Tax Commissioner may require the filing
18 of returns and the payment of taxes on a quarterly basis.

19 (3) Whenever any employer or payor fails to collect,
20 truthfully account for, pay over, or make returns of the income
21 tax as required by this section, the Tax Commissioner may serve a
22 notice requiring such employer or payor to collect the taxes which
23 become collectible after service of such notice, to deposit such
24 taxes in a bank approved by the Tax Commissioner in a separate
25 account in trust for and payable to the Tax Commissioner, and to

1 keep the amount of such tax in such account until paid over to the
2 Tax Commissioner. Such notice shall remain in effect until a notice
3 of cancellation is served by the Tax Commissioner.

4 (4) Any employer or payor may appoint an agent in
5 accordance with section 3504 of the Internal Revenue Code of 1986,
6 as amended, for the purpose of withholding, reporting, or making
7 payment of amounts withheld on behalf of the employer or payor.
8 The agent shall be considered an employer or payor for purposes
9 of the Nebraska Revenue Act of 1967 and, with the actual employer
10 or payor, shall be jointly and severally liable for any amount
11 required to be withheld and paid over to the Tax Commissioner and
12 any additions to tax, penalties, and interest with respect thereto.

13 (5) The employer or payor shall also file on or before
14 March 15 of the succeeding year a copy of each statement furnished
15 by such employer or payor to each employee or payee with respect
16 to taxes withheld on wages or payments subject to withholding. Any
17 employer, payor, or agent who furnished more than two hundred fifty
18 statements for a year shall file the required copies electronically
19 in a manner approved by the Tax Commissioner that is compatible
20 with federal electronic filing requirements or methods.

21 Sec. 14. Section 77-2790, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 77-2790 ~~(1)~~ (1)(a) If any part of a deficiency is
24 the result of negligence or intentional disregard of rules and
25 regulations but without intent to defraud, the Tax Commissioner may

1 add to the tax an amount equal to five percent of the deficiency.

2 (b) If any part of a requested refund is overstated
3 as a result of negligence, material misstatement, or intentional
4 disregard of rules and regulations but without intent to defraud,
5 the Tax Commissioner may add to the tax an amount equal to five
6 percent of the overstatement of the refund.

7 ~~(2)~~ (2) (a) If any part of a deficiency is the result of
8 fraud, the Tax Commissioner may add to the tax an amount equal to
9 fifty percent of the deficiency. This amount shall be in lieu of
10 any amount determined under subsection (1) of this section.

11 (b) If any part of a requested refund is overstated as a
12 result of fraud, the Tax Commissioner may add to the tax an amount
13 equal to fifty percent of the overstatement of the refund. This
14 amount shall be in lieu of any amount determined under subsection
15 (1) of this section.

16 (3) If any taxpayer fails to pay all or any part of an
17 installment of any tax due, he or she shall be deemed to have
18 made an underpayment of estimated tax. The Tax Commissioner shall
19 determine the amount of underpayment of estimated tax in accordance
20 with the laws of the United States.

21 (4) If any taxpayer, with intent to evade or defeat any
22 income tax imposed by the Nebraska Revenue Act of 1967 or the
23 payment thereof, claims an excessive number of exemptions or in any
24 other manner overstates the amount of withholding, he or she shall
25 be guilty of a Class II misdemeanor. If any employer or payor,

1 without intent to evade or defeat any income tax imposed by the
2 Nebraska Revenue Act of 1967 or the payment thereof, fails to make
3 a return and pay a tax withheld by him or her at the time required
4 by or under the act, such employer or payor shall be liable for
5 such taxes and shall pay the same together with interest thereon
6 and any addition to tax assessed pursuant to subsection (1) of this
7 section. Such interest and addition to tax shall not be charged to
8 or collected from the employee or payee by the employer or payor.
9 The Tax Commissioner shall have the same rights and powers for
10 the collection of such tax, interest, and addition to tax against
11 such employer or payor as are now prescribed by the act for the
12 collection of income tax against a taxpayer.

13 (5) If any person required to collect, withhold,
14 truthfully account for, and pay over the income tax imposed by
15 the Nebraska Revenue Act of 1967 willfully fails to collect or
16 withhold such tax or truthfully account for and pay over such tax
17 or willfully attempts in any manner to evade or defeat the tax or
18 the payment thereof, the Tax Commissioner may, in addition to other
19 penalties provided by law, impose, assess, and collect a penalty
20 equal to the total amount of the tax evaded, not collected, not
21 withheld, or not accounted for and paid over. No addition to tax
22 under subsection (1) or (2) of this section shall be imposed for
23 any offense to which this subsection applies.

24 (6) If any person with fraudulent intent fails to pay,
25 or to deduct or withhold and pay, any income tax, to make, render,

1 sign, or certify any return of estimated tax, or to supply any
2 information within the time required, the Tax Commissioner may
3 impose, assess, and collect a penalty of not more than one thousand
4 dollars, in addition to any other amounts required under the income
5 tax provisions of the Nebraska Revenue Act of 1967.

6 (7) If any person for frivolous or groundless reasons
7 or with the intent to delay or impede the administration of
8 the Nebraska Revenue Act of 1967 (a) fails to pay over any
9 tax due and owing under such act, (b) fails to file any return
10 required under such act, or (c) files what purports to be a return
11 but which does not contain sufficient information from which to
12 determine the correctness of the self-assessment of tax or which
13 contains information that indicates that the self-assessment of tax
14 is substantially incorrect, such person shall pay a penalty of
15 five hundred dollars for each occurrence. The penalty provided by
16 ~~the~~ this subsection shall be in addition to any other penalties
17 provided by law.

18 (8) Any person who aids, procures, advises, or assists
19 in the preparation of any return, affidavit, refund claim, or
20 other document with the knowledge that its use will result in the
21 material understatement of the tax liability of another person or
22 the material overstatement of the amount of a refund of another
23 person shall, in addition to other penalties provided by law, pay
24 a penalty of one thousand dollars with respect to each separate
25 return or other document.

1 (a) For the purposes of this subsection, a person
2 furnishing typing, reproducing, or other mechanical assistance
3 shall not be treated as having aided or assisted in the preparation
4 of such document.

5 (b) A determination of a material deficiency shall not
6 be sufficient to show that a person has aided or assisted in a
7 material understatement of the tax liability of another person.

8 (c) The penalty in this subsection shall not be imposed
9 more than once on any person for having aided or assisted in the
10 preparation of documents for the same taxpayer, the same tax, and
11 the same tax period regardless of the number of documents involved.

12 (d) Such penalty shall apply whether or not the
13 understatement is with the consent of the person authorized to
14 present the return, affidavit, refund claim, or other document.

15 (9) The additions to the income tax and penalties
16 relating thereto provided by the Nebraska Revenue Act of 1967
17 shall be paid upon notice and demand and shall be assessed,
18 collected, and paid in the same manner as taxes, and any reference
19 in such act to income tax or the tax imposed by the act shall be
20 deemed also to refer to additions to the tax and penalties provided
21 by this section. For purposes of the deficiency procedures provided
22 in section 77-2776, this subsection shall not apply to:

23 (a) Any addition to tax under subsection (1) of section
24 77-2789 except as to that portion attributable to a deficiency;

25 (b) Any addition to tax for underpayment of estimated tax

1 as provided in subsection (3) of this section; or

2 (c) Any additional penalty under subsection (6), (7), or
3 (8) of this section.

4 (10) For purposes of subsections (1) and (2) of this
5 section relating to deficiencies resulting from negligence or
6 fraud, the amount shown as the tax by the taxpayer upon his or her
7 return shall be taken into account in determining the amount of the
8 deficiency only if such return was filed on or before the last day
9 prescribed for the filing of such return determined with regard to
10 any extension of time for such filing.

11 (11) For purposes of subsections (5) and (6) of this
12 section, the term person shall include an individual, corporation,
13 partnership, or limited liability company, or an officer or
14 employee of any corporation, including a dissolved corporation,
15 or a member or employee of any partnership or limited liability
16 company, who as such officer, employee, or member is under a duty
17 to perform the act in respect of which the violation occurs.

18 (12) If any person fails to comply with the reporting or
19 filing requirements of sections 77-2772, 77-2775, and 77-2786 or
20 the rules and regulations adopted and promulgated thereunder, the
21 Tax Commissioner may impose, assess, and collect a penalty against
22 such person for each instance of noncompliance of twenty-five
23 percent of the tax due. Such amount shall be in addition to any
24 other penalty, tax, or interest otherwise imposed by law for such
25 noncompliance.

1 (13) If any nonresident individual provides false
2 information or statements to an employer or payor regarding the
3 portion of his or her wages or payments that are subject to
4 withholding for this state which if used would result in the
5 amount withheld being less than seventy-five percent of his or
6 her income tax liability on such wages or payments or if any
7 employer or payor uses such information when the employer or payor
8 knows such information is false or maintains records which show
9 such information is false, the Tax Commissioner may, in addition
10 to other penalties provided by law, impose, assess, and collect
11 from such individual, payor, or employer the penalties provided in
12 subsections (5) and (6) of this section.

13 (14) If any employer or payor employing twenty-five or
14 more employees who is required to withhold and pay over income tax
15 imposed by the Nebraska Revenue Act of 1967 fails to either (a)
16 withhold at least three percent of the wages of any employee or (b)
17 obtain satisfactory evidence from the employee justifying a lower
18 withholding amount as required by subdivision (1)(b) of section
19 77-2753, the Tax Commissioner may impose, assess, and collect a
20 penalty of not more than one thousand dollars per violation.

21 Sec. 15. Section 77-27,131, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 77-27,131 (1) Unless otherwise specifically provided, the
24 Tax Commissioner, whenever he or she deems it necessary to insure
25 compliance with the provisions of the Nebraska Revenue Act of 1967,

1 may require any person subject to the act to place with him or
2 her such security as he or she may determine. The amount of the
3 necessary security shall be fixed by the Tax Commissioner but,
4 except as provided in this section, shall not be greater than three
5 times the estimated average amount payable for the reporting period
6 by such persons pursuant to the act, ~~or ten thousand dollars,~~
7 ~~whichever amount is the lesser.~~ In the case of persons habitually
8 delinquent in their obligations under the act, the amount of the
9 security shall not be greater than five times the estimated average
10 amount payable for the reporting period by such persons pursuant
11 to the act, ~~or fifteen thousand dollars, whichever is the lesser.~~
12 The amount of the security may be increased or decreased by the Tax
13 Commissioner at any time, subject to the limitations set forth in
14 this subsection.

15 (2) The Tax Commissioner may sell the security at public
16 auction or, in the case of security in the form of bearer bonds
17 issued by the United States or this state which have a prevailing
18 market price, at a private sale at a price not lower than the
19 prevailing market price if it becomes necessary to make such sale
20 in order to recover any tax, interest, or penalties due on any
21 amount required to be collected. Notice of the sale shall be given
22 to the person who deposited the security at least ten days before
23 the sale. The notice may be given personally or by mail addressed
24 to the person at the address furnished to the Tax Commissioner and
25 as it appears in the records of the Tax Commissioner. Upon such

1 sale, any surplus above the amounts due shall be returned to the
2 person who placed the security.

3 Sec. 16. Section 77-27,187.01, Revised Statutes
4 Cumulative Supplement, 2006, is amended to read:

5 77-27,187.01 For purposes of the Nebraska Advantage Rural
6 Development Act, unless the context otherwise requires:

7 (1) Any term has the same meaning as used in the Nebraska
8 Revenue Act of 1967;

9 (2) Equivalent ~~Nebraska~~ employees means the number of
10 ~~Nebraska~~ employees computed by dividing the total hours paid in a
11 year to ~~Nebraska~~ employees by the product of forty times the number
12 of weeks in a year;

13 (3) Livestock means all animals, including cattle,
14 horses, sheep, goats, hogs, chickens, turkeys, and other species
15 of game birds and animals raised and produced subject to permit
16 and regulation by the Game and Parks Commission or the Department
17 of Agriculture;

18 ~~(3)~~ (4) Livestock modernization or expansion means
19 the construction, improvement, or acquisition of buildings,
20 facilities, or equipment for livestock housing, confinement,
21 feeding, production, and waste management;

22 ~~(4)~~ Livestock production has the same meaning as in
23 section 77-5203;

24 ~~(5)~~ Nebraska employee means an individual who is either a
25 resident or partial-year resident of Nebraska;

1 (5) Livestock production means the active use,
2 management, and operation of real and personal property for the
3 commercial production of livestock, for the commercial breeding,
4 training, showing, or racing of horses, or for the use of horses
5 in a recreational or tourism enterprise. The activity will be
6 considered commercial if the gross income derived from an activity
7 for two or more of the taxable years in the period of seven
8 consecutive taxable years which ends with the taxable year exceeds
9 the deductions attributable to such activity or, if the operation
10 has been in existence for less than seven years, if the activity is
11 engaged in for the purpose of generating a profit;

12 (6) Qualified employee leasing company means a company
13 which places all employees of a client-lessee on its payroll and
14 leases such employees to the client-lessee on an ongoing basis
15 for a fee and, by written agreement between the employee leasing
16 company and a client-lessee, grants to the client-lessee input into
17 the hiring and firing of the employees leased to the client-lessee;

18 (7) Related taxpayers includes any corporations that are
19 part of a unitary business under the Nebraska Revenue Act of 1967
20 but are not part of the same corporate taxpayer, any business
21 entities that are not corporations but which would be a part of
22 the unitary business if they were corporations, and any business
23 entities if at least fifty percent of such entities are owned by
24 the same persons or related taxpayers and family members as defined
25 in the ownership attribution rules of the Internal Revenue Code of

1 1986, as amended;

2 (8) Taxpayer means a corporate taxpayer or other person
3 subject to either an income tax imposed by the Nebraska Revenue
4 Act of 1967 or a franchise tax under Chapter 77, article 38, or a
5 partnership, limited liability company, subchapter S corporation,
6 cooperative, including a cooperative exempt under section 521 of
7 the Internal Revenue Code of 1986, as amended, or joint venture
8 that is or would otherwise be a member of the same unitary group
9 if incorporated, which is, or whose partners, members, or owners
10 representing an ownership interest of at least ninety percent
11 of the control of such entity are, subject to or exempt from
12 such taxes, and any other partnership, limited liability company,
13 subchapter S corporation, cooperative, including a cooperative
14 exempt under section 521 of the Internal Revenue Code of 1986, as
15 amended, or joint venture when the partners, members, or owners
16 representing an ownership interest of at least ninety percent of
17 the control of such entity are subject to or exempt from such
18 taxes; and

19 (9) Year means the taxable year of the taxpayer.

20 Sec. 17. Section 77-27,187.02, Revised Statutes
21 Cumulative Supplement, 2006, is amended to read:

22 77-27,187.02 (1) To earn the incentives set forth in the
23 Nebraska Advantage Rural Development Act, the taxpayer shall file
24 an application for an agreement with the Tax Commissioner.

25 (2) The application shall contain:

1 (a) A written statement describing the full expected
2 employment or type of livestock production and the investment
3 amount for a qualified business, as described in section 77-27,189,
4 in this state;

5 (b) Sufficient documents, plans, and specifications as
6 required by the Tax Commissioner to support the plan and to define
7 a project; and

8 (c) An application fee of five hundred dollars. The fee
9 shall be remitted to the State Treasurer for credit to the Nebraska
10 Advantage Rural Development Fund, which fund is hereby created. Any
11 money in the fund available for investment shall be invested by the
12 state investment officer pursuant to the Nebraska Capital Expansion
13 Act and the Nebraska State Funds Investment Act. The application
14 and all supporting information shall be confidential except for the
15 name of the taxpayer, the location of the project, and the amounts
16 of increased employment or investment.

17 (3) (a) The Tax Commissioner shall approve the application
18 and authorize the total amount of credits expected to be earned as
19 a result of the project if he or she is satisfied that the plan in
20 the application defines a project that (i) meets the requirements
21 established in section 77-27,188 and such requirements will be
22 reached within the required time period and (ii) for projects other
23 than livestock modernization or expansion projects, is located in
24 an eligible county or enterprise zone.

25 (b) The Tax Commissioner shall not approve further

1 applications once the expected credits from the approved projects
2 total two million five hundred thousand dollars in each of fiscal
3 years 2004-05 and 2005-06 and three million dollars in fiscal
4 year 2006-07 and each fiscal year thereafter. Four hundred dollars
5 of the application fee shall be refunded to the applicant if
6 the application is not approved because the expected credits from
7 approved projects exceed such amounts.

8 (c) Applications for benefits shall be considered in the
9 order in which they are received.

10 (d) Applications shall be filed by November 1 and shall
11 be complete by December 1 of each calendar year. Any application
12 that is filed after November 1 or that is not complete on December
13 1 shall be considered to be filed during the following calendar
14 year.

15 (4) After approval, the taxpayer and the Tax Commissioner
16 shall enter into a written agreement. The taxpayer shall agree
17 to complete the project, and the Tax Commissioner, on behalf of
18 the State of Nebraska, shall designate the approved plans of the
19 taxpayer as a project and, in consideration of the taxpayer's
20 agreement, agree to allow the taxpayer to use the incentives
21 contained in the Nebraska Advantage Rural Development Act up to
22 the total amount that were authorized by the Tax Commissioner
23 at the time of approval. The application, and all supporting
24 documentation, to the extent approved, shall be considered a part
25 of the agreement. The agreement shall state:

1 (a) The levels of employment and investment required by
2 the act for the project;

3 (b) The time period under the act in which the required
4 level must be met;

5 (c) The documentation the taxpayer will need to supply
6 when claiming an incentive under the act;

7 (d) The date the application was filed; and

8 (e) The maximum amount of credits authorized.

9 Sec. 18. Section 77-27,188, Revised Statutes Cumulative
10 Supplement, 2006, is amended to read:

11 77-27,188 (1) A refundable credit against the taxes
12 imposed by the Nebraska Revenue Act of 1967 shall be allowed to any
13 taxpayer who has an approved application pursuant to the Nebraska
14 Advantage Rural Development Act, who is engaged in a qualifying
15 business as described in section 77-27,189, and who after January
16 1, 2006:

17 (a)(i) Increases employment by two new equivalent
18 ~~Nebraska~~ employees and makes an increased investment of at least
19 one hundred twenty-five thousand dollars prior to the end of the
20 first taxable year after the year in which the application was
21 submitted in any county in this state with a population of fewer
22 than fifteen thousand inhabitants, according to the most recent
23 federal decennial census, or in any designated enterprise zone
24 pursuant to 42 U.S.C. 11501 or the Enterprise Zone Act; or

25 (ii) Increases employment by five new equivalent ~~Nebraska~~

1 employees and makes an increased investment of at least two hundred
2 fifty thousand dollars prior to the end of the first taxable year
3 after the year in which the application was submitted in any county
4 in this state with a population of less than twenty-five thousand
5 inhabitants, according to the most recent federal decennial census;
6 and

7 (b) Pays a minimum qualifying wage of eight dollars and
8 twenty-five cents per hour to the new equivalent ~~Nebraska~~ employees
9 for which tax credits are sought under the Nebraska Advantage Rural
10 Development Act. The Department of Revenue shall adjust the minimum
11 qualifying wages required for applications filed after January 1,
12 2004, and each January 1 thereafter, as follows: The current rural
13 Nebraska average weekly wage shall be divided by the rural Nebraska
14 average weekly wage for 2003; and the result shall be multiplied by
15 the eight dollars and twenty-five cents minimum qualifying wage for
16 2003 and rounded to the nearest one cent. The amount of increase
17 or decrease in the minimum qualifying wages for any year shall
18 be the cumulative change in the rural Nebraska average weekly
19 wage since 2003. For purposes of this subsection, rural Nebraska
20 average weekly wage means the most recent average weekly wage paid
21 by all employers in all counties with a population of less than
22 twenty-five thousand inhabitants as reported by October 1 by the
23 Department of Labor.

24 For purposes of this section, a teleworker working in
25 Nebraska from his or her residence for a taxpayer shall be

1 considered an employee of the taxpayer, and property of the
2 taxpayer provided to the teleworker working in Nebraska from his
3 or her residence shall be considered an investment. Teleworker
4 includes an individual working on a per-item basis and an
5 independent contractor working for the taxpayer so long as the
6 taxpayer withholds Nebraska income tax from wages or other payments
7 made to such teleworker. For purposes of calculating the number of
8 new equivalent ~~Nebraska~~ employees when the teleworkers are paid on
9 a per-item basis or are independent contractors, the total wages
10 or payments made to all such new employees during the year shall
11 be divided by the qualifying wage as determined in subdivision (b)
12 of this subsection, with the result divided by two thousand eighty
13 hours.

14 (2) A refundable credit against the taxes imposed by the
15 Nebraska Revenue Act of 1967 shall be allowed to any taxpayer who
16 (a) has an approved application pursuant to the Nebraska Advantage
17 Rural Development Act, (b) is engaged in livestock production, and
18 (c) after January 1, 2007, invests at least fifty thousand dollars
19 for livestock modernization or expansion.

20 (3) The amount of the credit allowed under subsection
21 (1) of this section shall be three thousand dollars for each new
22 equivalent ~~Nebraska~~ employee and two thousand seven hundred fifty
23 dollars for each fifty thousand dollars of increased investment.
24 The amount of the credit allowed under subsection (2) of this
25 section shall be ten percent of the investment, not to exceed a

1 credit of thirty thousand dollars. For each application, a taxpayer
2 engaged in livestock production may qualify for a credit under
3 either subsection (1) or (2) of this section, but cannot qualify
4 for more than one credit per application.

5 (4) An employee of a qualified employee leasing company
6 shall be considered to be an employee of the client-lessee for
7 purposes of this section if the employee performs services for the
8 client-lessee. A qualified employee leasing company shall provide
9 the Department of Revenue access to the records of employees leased
10 to the client-lessee.

11 (5) The credit shall not exceed the amounts set out in
12 the application and approved by the Tax Commissioner.

13 (6) (a) If a taxpayer who receives tax credits creates
14 fewer jobs or less investment than required in the project
15 agreement, the taxpayer shall repay the tax credits as provided in
16 this subsection.

17 (b) If less than seventy-five percent of the required
18 jobs in the project agreement are created, one hundred percent
19 of the job creation tax credits shall be repaid. If seventy-five
20 percent or more of the required jobs in the project agreement are
21 created, no repayment of the job creation tax credits is necessary.

22 (c) If less than seventy-five percent of the required
23 investment in the project agreement is created, one hundred percent
24 of the investment tax credits shall be repaid. If seventy-five
25 percent or more of the required investment in the project

1 agreement is created, no repayment of the investment tax credits is
2 necessary.

3 (7) For taxpayers who submitted applications for benefits
4 under the Nebraska Advantage Rural Development Act before January
5 1, 2006, subsection (1) of this section, as such subsection existed
6 immediately prior to such date, shall continue to apply to such
7 taxpayers. The changes made by Laws 2005, LB 312, shall not
8 preclude a taxpayer from receiving the tax incentives earned prior
9 to January 1, 2006.

10 Sec. 19. Section 77-27,189, Revised Statutes Cumulative
11 Supplement, 2006, is amended to read:

12 77-27,189 (1) A qualified business means any business
13 engaged in:

14 (a) Storage, warehousing, distribution, transportation,
15 or sale of tangible personal property;

16 (b) Livestock production;

17 (c) Conducting research, development, or testing for
18 scientific, agricultural, animal husbandry, food product, or
19 industrial purposes;

20 (d) Performing data processing, telecommunication,
21 insurance, or financial services. For purposes of this subdivision,
22 financial services ~~shall~~ includes ~~only~~ ~~include~~ financial services
23 provided by any financial institution subject to tax under
24 Chapter 77, article 38, or any person or entity licensed by the
25 Department of Banking and Finance or the Securities and Exchange

1 Commission and telecommunication services includes community
2 antenna television service, Internet access, satellite ground
3 station, data center, call center, or telemarketing;

4 (e) Assembly, fabrication, manufacture, or processing of
5 tangible personal property;

6 (f) Administrative management of any activities,
7 including headquarter facilities relating to such activities; or

8 (g) Any combination of the activities listed in this
9 subsection.

10 (2) Qualified business does not include:

11 (a) Any business activity in which eighty percent or more
12 of the total sales are sales to the ultimate consumer of food
13 prepared for immediate consumption or are sales to the ultimate
14 consumer of tangible personal property which is not (i) assembled,
15 fabricated, manufactured, or processed by the taxpayer or (ii) used
16 by the purchaser in any of the activities listed in subsection (1)
17 of this section; and

18 (b) Any casino.

19 Sec. 20. Section 77-27,190, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 77-27,190 (1) A taxpayer shall be deemed to have new
22 equivalent ~~Nebraska~~ employees when the new equivalent ~~Nebraska~~
23 employees hired during a taxable year are in addition to the number
24 of total equivalent employees in the taxable year preceding the
25 date of application.

1 (2) Qualifying business employees who work within and
2 without this state shall be considered only to the extent they are
3 paid for work performed within this state.

4 (3) The hours worked by any person considered an
5 independent contractor or the employee of another taxpayer shall
6 not be used in the computation under this section.

7 Sec. 21. Section 77-27,192, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 77-27,192 (1) (a) If the taxpayer acquires an existing
10 business, the increases determined in sections 77-27,190 and
11 77-27,191 shall be computed as though the taxpayer had owned the
12 business ~~during the current taxable year and the three preceding~~
13 ~~taxable years.~~ for the entire taxable year preceding the date of
14 application.

15 (b) If the taxpayer disposes of an existing business,
16 and the new owner maintains the minimum increases in the levels of
17 investment and employment required in section 77-27,188 to create
18 a credit, the taxpayer shall not be required to make any repayment
19 under section 77-27,188.02 solely because of the disposition of the
20 business.

21 (2) If the structure of a business is reorganized, the
22 taxpayer shall compute the increases on a consistent basis for all
23 periods.

24 (3) If the taxpayer moves a business from one location
25 to another and the business was operated in this state during

1 the taxable year preceding the date of application, the increases
2 determined in sections 77-27,190 and 77-27,191 shall be computed as
3 though the taxpayer had operated the business at the new location
4 for the entire taxable year preceding the date of application.

5 (4) If the taxpayer enters into any of the following
6 transactions, they shall be presumed to be a transaction entered
7 into for the purpose of generating benefits under the Nebraska
8 Advantage Rural Development Act and shall not be allowed in
9 the computation of any benefit or the meeting of any required
10 levels under the agreement except as specifically provided in this
11 subsection:

12 (a) The purchase or lease of any property which was
13 previously owned by the taxpayer which filed the application or a
14 related taxpayer unless the first purchase by either the taxpayer
15 which filed the application or a related taxpayer was first placed
16 in service in the state after the beginning of the taxable year the
17 application was filed;

18 (b) The renegotiation of any lease in existence during
19 the taxable year the application was filed which does not
20 materially change any of the terms of the lease other than
21 the expiration date;

22 (c) The purchase or lease of any property from a related
23 taxpayer, except that the taxpayer which filed the application will
24 be allowed any benefits under the act to which the related taxpayer
25 would have been entitled on the purchase or lease of the property

1 if the related taxpayer was considered the taxpayer;

2 (d) Any transaction entered into primarily for the
3 purpose of receiving benefits under the act which is without a
4 business purpose and does not result in increased economic activity
5 in the state; and

6 (e) Any activity that results in benefits under the
7 Ethanol Development Act.

8 Sec. 22. Section 77-3102, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 77-3102 (1) In order that the State of Nebraska and
11 the political subdivisions thereof may receive all taxes due in
12 every instance, including contributions due under the Employment
13 Security Law, contractors who are nonresidents of this state,
14 desiring to engage in, prosecute, follow, or carry on the business
15 of contracting within this state shall register with the Tax
16 Commissioner.

17 (2) Each contract to which a nonresident contractor is a
18 party shall be registered with the Tax Commissioner, except that if
19 ~~÷ PROVIDED, that where~~ the total contract price or compensation to
20 be received is less than ~~twenty-five hundred~~ ten thousand dollars,
21 the Tax Commissioner may waive the requirements of this subsection.

22 Sec. 23. Section 77-3903, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 77-3903 (1)(a) A notice of lien provided for in the
25 Uniform State Tax Lien Registration and Enforcement Act upon real

1 property shall be presented in the office of the Secretary of
2 State. Such notice of lien shall be transmitted by the Secretary
3 of State to and filed in the office of the register of deeds
4 by the register of deeds of the county or counties in which the
5 real property subject to the lien is situated as designated in
6 the notice of lien. The register of deeds shall enter the notice
7 in the alphabetical state tax lien index, showing on one line
8 the name and residence of the person liable named in such notice,
9 the last four digits of the social security number or the federal
10 tax identification number of such person, the Tax Commissioner's,
11 Property Tax Administrator's, or Commissioner of Labor's serial
12 number of such notice, the date and hour of filing, and the amount
13 due. Such presentments to the Secretary of State may be made by
14 direct input to the Secretary of State's data base or by other
15 electronic means. All such notices of lien shall be retained in
16 numerical order in a file designated state tax lien notices, except
17 that in offices filing by the roll form of microfilm pursuant
18 to section 23-1517.01, the original notices need not be retained.
19 A lien subject to this subsection shall be effective upon real
20 property when filed by the register of deeds as provided in this
21 subsection.

22 (b) A notice of lien provided for in the Uniform State
23 Tax Lien Registration and Enforcement Act upon personal property
24 shall be filed in the office of the Secretary of State. The
25 Secretary of State shall enter the notice in the state's central

1 tax lien index, showing on one line the name and residence of the
2 person liable named in such notice, the last four digits of the
3 social security number or the federal tax identification number of
4 such person, the Tax Commissioner's, Property Tax Administrator's,
5 or Commissioner of Labor's serial number of such notice, the date
6 and hour of filing, and the amount due. Such filings with the
7 Secretary of State may be filed by direct input to the Secretary
8 of State's data base or by other electronic means. All such notices
9 of lien shall be retained in numerical order in a file designated
10 state tax lien notices.

11 (2) Beginning July 1, 1999, the uniform fee, payable
12 to the Secretary of State, for presenting for filing, releasing,
13 continuing, or subordinating or for filing, releasing, continuing,
14 or subordinating each tax lien pursuant to the Uniform State Tax
15 Lien Registration and Enforcement Act shall be six dollars. There
16 shall be no fee for the filing of a termination statement. The
17 uniform fee for each county more than one designated pursuant to
18 subdivision (1)(a) of this section shall be three dollars. The
19 Secretary of State shall deposit each fee received pursuant to
20 this section in the Uniform Commercial Code Cash Fund. Of the fees
21 received and deposited pursuant to this section, the Secretary of
22 State shall remit three dollars to the register of deeds of a
23 county for each designation of such county in a filing pursuant to
24 subdivision (1)(a) of this section.

25 (3) The Secretary of State shall bill the Tax

1 Commissioner, Property Tax Administrator, or Commissioner of
2 Labor on a monthly basis for fees for documents presented to or
3 filed with the Secretary of State. No payment of any fee shall
4 be required at the time of presenting or filing any such lien
5 document.

6 Sec. 24. Section 77-3904, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 77-3904 (1) If any person liable to pay any tax or
9 fee under any tax program administered by the Tax Commissioner,
10 Property Tax Administrator, or Commissioner of Labor neglects or
11 refuses to pay such tax or fee after demand, the amount of such
12 tax or fee, including any interest, penalty, and additions to such
13 tax and such additional costs that may accrue, shall be a lien in
14 favor of the State of Nebraska upon all property and rights to
15 property, whether real or personal, then owned by such person or
16 acquired by him or her thereafter and prior to the expiration of
17 the lien. Unless another date is specifically provided by law, such
18 lien shall arise at the time of the assessment and shall remain
19 in effect (a) for three years from the time of the assessment if
20 the notice of lien is not filed for record in the office of the
21 appropriate filing officer, (b) for ten years from the time of
22 filing for record in the office of the appropriate filing officer,
23 or (c) until such amounts have been paid or a judgment against
24 such person arising out of such liability has been satisfied or
25 has become unenforceable by reason of lapse of time, unless a

1 continuation statement is filed prior to the lapse.

2 ~~(2)~~ (2) (a) The Tax Commissioner, Property Tax
3 Administrator, or Commissioner of Labor may present for filing or
4 file for record in the office of the appropriate filing officer
5 a notice of lien specifying the year the tax was due, the tax
6 program, and the amount of the tax and any interest, penalty, or
7 addition to such tax that are due. Such notice shall be filed for
8 record in the office of the appropriate filing officer within three
9 years after the time of assessment. Such notice shall contain the
10 name and last-known address of the taxpayer, the last four digits
11 of the taxpayer's social security number or federal identification
12 number, the Tax Commissioner's, Property Tax Administrator's, or
13 Commissioner of Labor's serial number, and a statement to the
14 effect that the Tax Commissioner, Property Tax Administrator, or
15 Commissioner of Labor has complied with all provisions of the law
16 for the particular tax program which he or she administers in the
17 determination of the amount of the tax and any interest, penalty,
18 and addition to such tax required to be paid.

19 (b) If the assets of the taxpayer are in the control or
20 custody of the court in any proceeding before any court of the
21 United States or of any state or the District of Columbia, before
22 the end of the three-year period in subdivision (2) (a) of this
23 section, the notice shall be filed for record within the three-year
24 period or within six months after the assets are released by the
25 court, whichever is later.

1 (3) (a) (i) A lien imposed upon real property pursuant to
2 the Uniform State Tax Lien Registration and Enforcement Act shall
3 be valid against any subsequent creditor when notice of such lien
4 and the amount due has been presented for filing by the Tax
5 Commissioner, Property Tax Administrator, or Commissioner of Labor
6 in the office of the Secretary of State and filed in the office of
7 the register of deeds.

8 (ii) A lien imposed upon personal property pursuant to
9 the Uniform State Tax Lien Registration and Enforcement Act shall
10 be valid against any subsequent creditor when notice of such lien
11 and the amount due has been filed by the Tax Commissioner, Property
12 Tax Administrator, or Commissioner of Labor in the office of the
13 Secretary of State.

14 (b) In the case of any prior mortgage on real property
15 or secured transaction covering personal property so written as
16 to secure a present debt and future advances, the lien provided
17 in the act, when notice thereof has been filed in the office of
18 the appropriate filing officer, shall be subject to such prior
19 lien unless the Tax Commissioner, Property Tax Administrator, or
20 Commissioner of Labor has notified the lienholder in writing of
21 the recording of such tax lien, in which case the lien of any
22 indebtedness thereafter created under such mortgage or secured
23 transaction shall be junior to the lien provided for in the act.

24 (4) The lien may, within ten years from the date of
25 filing for record of the notice of lien in the office of the

1 appropriate filing officer, be extended by filing for record a
2 continuation statement. Upon timely filing of the continuation
3 statement, the effectiveness of the original notice shall be
4 continued for ten years after the last date to which the filing
5 was effective. After such period the notice shall lapse in the
6 manner prescribed in subsection (1) of this section unless another
7 continuation statement is filed prior to such lapse.

8 (5) When a termination statement of any tax lien
9 issued by the Tax Commissioner, Property Tax Administrator, or
10 Commissioner of Labor is filed in the office where the notice of
11 lien is filed, the appropriate filing officer shall enter such
12 statement with the date of filing in the state tax lien index where
13 notice of the lien so terminated is entered and shall file the
14 termination statement with the notice of the lien.

15 (6) The Tax Commissioner, Property Tax Administrator, or
16 Commissioner of Labor may at any time, upon request of any party
17 involved, release from a lien all or any portion of the property
18 subject to any lien provided for in the Uniform State Tax Lien
19 Registration and Enforcement Act or subordinate a lien to other
20 liens and encumbrances if he or she determines that (a) the tax
21 amount and any interest, penalties, and additions to such tax have
22 been paid or secured sufficiently by a lien on other property,
23 (b) the lien has become legally unenforceable, (c) a surety bond
24 or other satisfactory security has been posted, deposited, or
25 pledged with the Tax Commissioner, Property Tax Administrator, or

1 Commissioner of Labor in an amount sufficient to secure the payment
2 of such taxes and any interest, penalties, and additions to such
3 taxes, or (d) the release, partial release, or subordination of
4 the lien will not jeopardize the collection of such taxes and any
5 interest, penalties, and additions to such tax.

6 (7) A certificate by the Tax Commissioner, Property Tax
7 Administrator, or Commissioner of Labor stating that any property
8 has been released from the lien or the lien has been subordinated
9 to other liens and encumbrances shall be conclusive evidence that
10 the property has in fact been released or the lien has been
11 subordinated pursuant to the certificate.

12 Sec. 25. Section 77-4105, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 77-4105 (1) A taxpayer who has signed an agreement under
15 section 77-4104 may elect to determine taxable income for purposes
16 of the Nebraska income tax using the sales factor only. The
17 election may be made for the year during which the application was
18 filed and for each year thereafter through the eighth year after
19 the end of the entitlement period. The election shall be made for
20 the year of the election by computing taxable income using the
21 sales factor only on the tax return.

22 (2) A taxpayer who has signed an agreement under section
23 77-4104 shall receive the incentive provided in this subsection
24 if the agreement contains one or more projects which together
25 will result in the investment in qualified property of at least

1 ten million dollars and the hiring of at least one hundred new
2 employees. Such ten-million-dollar investment and hiring of at
3 least one hundred new employees shall be considered a required
4 level of investment and employment for this subsection and for the
5 recapture of personal property tax only.

6 The following property used in connection with such
7 project or projects and acquired by the taxpayer, whether by
8 lease or purchase, after the date the application was filed shall
9 constitute separate classes of personal property:

10 (a) Turbine-powered aircraft, including turboprop,
11 turbojet, and turbofan aircraft, except when any such aircraft is
12 used for fundraising for or for the transportation of an elected
13 official;

14 (b) ~~Mainframe business computers~~ Computer systems, made
15 up of equipment that is interconnected in order to enable the
16 acquisition, storage, manipulation, management, movement, control,
17 display, transmission, or reception of data involving computer
18 software and hardware, used for business information processing
19 which require environmental controls of temperature and power
20 and which are capable of simultaneously supporting more than one
21 transaction and more than one user. A computer system includes
22 ~~plus~~ peripheral components which require environmental controls
23 of temperature and power connected to such computers. ~~Computer~~
24 ~~peripheral~~ Peripheral components shall be limited to additional
25 memory units, tape drives, disk drives, power supplies, cooling

1 units, data switches, and communication controllers; and

2 (c) Personal property which is business equipment located
3 in a single project if (i) the business equipment is involved
4 directly in the manufacture or processing of agricultural products
5 and (ii) the investment in the single project exceeds ten million
6 dollars.

7 Such property shall be eligible for exemption from the
8 tax on personal property from the first January 1 following the
9 date of acquisition for property in subdivision (2)(a) of this
10 section, or from the first January 1 following the end of the
11 year during which the required levels were exceeded for property
12 in subdivisions (2)(b) and (2)(c) of this section, through the
13 sixteenth December 31 after the filing of the application. In order
14 to receive the property tax exemptions allowed by subdivisions
15 (2)(a), (2)(b), and (2)(c) of this section, the taxpayer shall
16 annually file a claim for exemption with the Property Tax
17 Administrator on or before May 1. The form and supporting schedules
18 shall be prescribed by the Property Tax Administrator and shall
19 list all property for which exemption is being sought under this
20 section. A separate claim for exemption must be filed for each
21 project and each county in which property is claimed to be exempt.
22 A copy of this form must also be filed with the county assessor
23 in each county in which the applicant is requesting exemption.
24 The Property Tax Administrator shall determine the eligibility
25 of each item listed for exemption and, on or before August 10,

1 certify such to the taxpayer and to the affected county assessor.
2 Notwithstanding any other provision of law, the Property Tax
3 Administrator shall be allowed access to the applications and such
4 other records of the Department of Revenue as necessary in order to
5 determine the eligibility for exemption.

6 (3) When the taxpayer has met the required levels of
7 employment and investment contained in the agreement, the taxpayer
8 shall also be entitled to the following incentives:

9 (a) A refund of all sales and use taxes paid under
10 the Nebraska Revenue Act of 1967, the Local Option Revenue
11 Act, and sections 13-319, 13-324, and 13-2813 from the date of
12 the application through the meeting of the required levels of
13 employment and investment for all purchases, including rentals, of:

14 (i) Qualified property used as a part of the project;

15 (ii) Property, excluding motor vehicles, based in this
16 state and used in both this state and another state in connection
17 with the project except when any such property is to be used for
18 fundraising for or for the transportation of an elected official;

19 (iii) Tangible personal property by the owner of the
20 improvement to real estate that is incorporated into real estate as
21 a part of a project; and

22 (iv) Tangible personal property by a contractor or
23 repairperson after appointment as a purchasing agent of the owner
24 of the improvement to real estate. The refund shall be based on
25 fifty percent of the contract price, excluding any land, as the

1 cost of materials subject to the sales and use tax; and

2 (b) A refund of the sales and use taxes paid under the
3 Nebraska Revenue Act of 1967, the Local Option Revenue Act, and
4 sections 13-319, 13-324, and 13-2813 on the types of purchases,
5 including rentals, listed in subdivision (a) of this subsection for
6 such taxes paid during each year of the entitlement period in which
7 the taxpayer is at or above the required levels of employment and
8 investment.

9 (4) Any taxpayer who qualifies for the incentives
10 contained in subsections (1) and (3) of this section and who has
11 added at least thirty new employees at the project shall also be
12 entitled to:

13 (a) A credit equal to five percent of the amount by which
14 the total compensation paid during the year to employees who are
15 either Nebraska employees or base-year employees while employed at
16 the project exceeds the average compensation paid at the project
17 multiplied by the number of equivalent base-year employees.

18 For the computation of such credit, average compensation
19 shall mean the total compensation paid at the project divided by
20 the total number of equivalent employees at the project; and

21 (b) A credit equal to ten percent of the investment made
22 in qualified property at the project.

23 The credits prescribed in subdivisions (a) and (b) of
24 this subsection shall be allowable for compensation paid and
25 investments made during each year of the entitlement period that

1 the taxpayer is at or above the required levels of employment and
2 investment.

3 The credit prescribed in subdivision (b) of this
4 subsection shall also be allowable during the first year of the
5 entitlement period for investment in qualified property at the
6 project after the date of the application and before the required
7 levels of employment and investment were met.

8 Sec. 26. Section 77-4110, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 77-4110 (1) The Tax Commissioner shall submit an annual
11 report to the Legislature no later than ~~March~~ July 15 of each year.

12 (2) The report shall list (a) the agreements which have
13 been signed during the previous calendar year, (b) the agreements
14 which are still in effect, (c) the identity of each taxpayer, and
15 (d) the location of each project.

16 (3) The report shall also state by industry group (a)
17 the specific incentive options applied for under the Employment and
18 Investment Growth Act, (b) the refunds allowed on the investment,
19 (c) the credits earned, (d) the credits used to reduce the
20 corporate income tax and the credits used to reduce the individual
21 income tax, (e) the credits used to obtain sales and use tax
22 refunds, (f) the number of jobs created, (g) the total number
23 of employees employed in the state by the taxpayer on the last
24 day of the calendar quarter prior to the application date and
25 the total number of employees employed in the state by the

1 taxpayer on subsequent reporting dates, (h) the expansion of
2 capital investment, (i) the estimated wage levels of jobs created
3 subsequent to the application date, (j) the total number of
4 qualified applicants, (k) the projected future state revenue gains
5 and losses, (l) the sales tax refunds owed to the applicants, (m)
6 the credits outstanding, and (n) the value of personal property
7 exempted by class in each county.

8 (4) No information shall be provided in the report that
9 is protected by state or federal confidentiality laws.

10 ~~(5) By December 1, 1990, the Department of Revenue shall~~
11 ~~prepare a report with the available information required in this~~
12 ~~section for all prior years the act has been in effect. Information~~
13 ~~required in this section that is not available to the department~~
14 ~~for the report due December 1, 1990, shall be provided in the next~~
15 ~~annual report.~~

16 Sec. 27. Section 77-4933, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 77-4933 (1) The Department of Revenue shall submit an
19 annual report to the Legislature no later than ~~March~~ July 15 each
20 year. The report shall list (a) the agreements which have been
21 signed during the previous calendar year, (b) the agreements which
22 are still in effect, (c) the identity of each company, and (d) the
23 location of each project.

24 (2) The report shall also state by industry group (a)
25 the amount of wage benefit credits allowed under the Quality Jobs

1 Act, (b) the number of direct jobs created at the project, (c)
2 the amount of direct capital investment under the act, (d) the
3 estimated wage levels of jobs created by the companies at the
4 projects, (e) the estimated indirect jobs and investment created
5 on account of the projects, and (f) the projected future state and
6 local revenue gains and losses from all revenue sources on account
7 of the direct and indirect jobs and investment created on account
8 of the project.

9 (3) No information shall be provided in the report that
10 is protected by state or federal confidentiality laws.

11 Sec. 28. Section 77-5542, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 77-5542 (1) The Department of Revenue shall submit an
14 annual report to the Legislature no later than ~~March~~ July 15 each
15 year. The report shall list (a) the agreements which have been
16 signed during the previous calendar year, (b) the agreements which
17 are still in effect, (c) the identity of each company, and (d) the
18 location of each project.

19 (2) The report shall also state by industry group (a)
20 the amount of wage benefit credits and investment tax credits
21 allowed under the Invest Nebraska Act, (b) the number of direct
22 jobs created at the projects, (c) the amount of direct capital
23 investment under the act, (d) the estimated wage levels of jobs
24 created by the companies at the projects, (e) the estimated
25 indirect jobs and investment created on account of the projects,

1 and (f) the projected future state and local revenue gains and
2 losses from all revenue sources on account of the direct and
3 indirect jobs and investment created on account of the projects.

4 (3) No information shall be provided in the report that
5 is protected by state or federal confidentiality laws.

6 Sec. 29. Section 77-5715, Revised Statutes Cumulative
7 Supplement, 2006, is amended to read:

8 77-5715 (1) For a tier 2, tier 3, tier 4, or tier 5
9 project, qualified business means any business engaged in:

10 (a) The conducting of research, development, or testing
11 for scientific, agricultural, animal husbandry, food product, or
12 industrial purposes;

13 (b) The performance of data processing,
14 telecommunication, insurance, or financial services. For purposes
15 of this subdivision, financial services includes only financial
16 services provided by any financial institution subject to tax
17 under Chapter 77, article 38, or any person or entity licensed by
18 the Department of Banking and Finance or the federal Securities
19 and Exchange Commission and telecommunication services includes
20 community antenna television service, Internet access, satellite
21 ground station, data center, call center, or telemarketing;

22 (c) The assembly, fabrication, manufacture, or processing
23 of tangible personal property;

24 (d) The administrative management of the taxpayer's
25 activities, including headquarter facilities relating to such

1 activities or the administrative management of any of the
2 activities of any business entity or entities in which the taxpayer
3 or a group of its shareholders holds any direct or indirect
4 ownership interest of at least ten percent, including headquarter
5 facilities relating to such activities;

6 (e) The storage, warehousing, distribution,
7 transportation, or sale of tangible personal property;

8 (f) The sale of software development services, computer
9 systems design, product testing services, or guidance or
10 surveillance systems design services or the licensing of technology
11 if the taxpayer derives at least seventy-five percent of the sales
12 or revenue attributable to such activities relating to the project
13 from sales or licensing either to customers who are not related
14 persons and located outside the state or to the United States
15 Government; or

16 (g) Any combination of the activities listed in this
17 subsection.

18 (2) For a tier 1 project, qualified business means any
19 business engaged in:

20 (a) The conducting of research, development, or testing
21 for scientific, agricultural, animal husbandry, food product, or
22 industrial purposes;

23 (b) The assembly, fabrication, manufacture, or processing
24 of tangible personal property;

25 (c) The sale of software development services, computer

1 systems design, product testing services, or guidance or
2 surveillance systems design services or the licensing of technology
3 if the taxpayer derives at least seventy-five percent of the sales
4 or revenue attributable to such activities relating to the project
5 from sales or licensing either to customers who are not related
6 persons and are located outside the state or to the United States
7 Government; or

8 (d) Any combination of activities listed in this
9 subsection.

10 (3) Qualified business does not include any business
11 activity in which eighty percent or more of the total sales are
12 sales to the ultimate consumer of food prepared for immediate
13 consumption or are sales to the ultimate consumer of tangible
14 personal property which is not assembled, fabricated, manufactured,
15 or processed by the taxpayer or used by the purchaser in any of the
16 activities listed in subsection (1) or (2) of this section.

17 Sec. 30. Section 77-5725, Revised Statutes Cumulative
18 Supplement, 2006, is amended to read:

19 77-5725 (1) Applicants may qualify for benefits under the
20 Nebraska Advantage Act in one of five tiers:

21 (a) Tier 1, investment in qualified property of at least
22 one million dollars and the hiring of at least ten new employees.
23 There shall be no new project applications for benefits under
24 this tier filed on or after January 1, 2011, without further
25 authorization of the Legislature. All complete project applications

1 filed before January 1, 2011, shall be considered by the Tax
2 Commissioner and approved if the project and taxpayer qualify
3 for benefits. Agreements may be executed with regard to completed
4 project applications filed before January 1, 2011. All project
5 agreements pending, approved, or entered into before such date
6 shall continue in full force and effect;

7 (b) Tier 2, investment in qualified property of at least
8 three million dollars and the hiring of at least thirty new
9 employees;

10 (c) Tier 3, the hiring of at least thirty new employees.
11 There shall be no new project applications for benefits under
12 this tier filed on or after January 1, 2011, without further
13 authorization of the Legislature. All complete project applications
14 filed before January 1, 2011, shall be considered by the Tax
15 Commissioner and approved if the project and taxpayer qualify
16 for benefits. Agreements may be executed with regard to completed
17 project applications filed before January 1, 2011. All project
18 agreements pending, approved, or entered into before such date
19 shall continue in full force and effect;

20 (d) Tier 4, investment in qualified property of at least
21 ten million dollars and the hiring of at least one hundred new
22 employees; and

23 (e) Tier 5, investment in qualified property of at least
24 thirty million dollars. Failure to maintain an average number of
25 equivalent employees as defined in section 77-5727 greater than or

1 equal to the number of equivalent employees in the base year shall
2 result in a partial recapture of benefits.

3 (2) When the taxpayer has met the required levels of
4 employment and investment contained in the agreement for a tier 1,
5 tier 2, tier 4, or tier 5 project, the taxpayer shall be entitled
6 to the following incentives:

7 (a) A refund of all sales and use taxes for a tier 2,
8 tier 4, or tier 5 project or a refund of one-half of all sales and
9 use taxes for a tier 1 project paid under the Local Option Revenue
10 Act, the Nebraska Revenue Act of 1967, and sections 13-319, 13-324,
11 and 13-2813 from the date of the application through the meeting of
12 the required levels of employment and investment for all purchases,
13 including rentals, of:

14 (i) Qualified property used as a part of the project;

15 (ii) Property, excluding motor vehicles, based in this
16 state and used in both this state and another state in connection
17 with the project except when any such property is to be used for
18 fundraising for or for the transportation of an elected official;

19 (iii) Tangible personal property by the owner of the
20 improvement to real estate that is incorporated into real estate as
21 a part of a project; and

22 (iv) Tangible personal property by a contractor or
23 repairperson after appointment as a purchasing agent of the owner
24 of the improvement to real estate. The refund shall be based on
25 fifty percent of the contract price, excluding any land, as the

1 cost of materials subject to the sales and use tax; and

2 (b) A refund of all sales and use taxes for a tier 2,
3 tier 4, or tier 5 project or a refund of one-half of all sales and
4 use taxes for a tier 1 project paid under the Local Option Revenue
5 Act, the Nebraska Revenue Act of 1967, and sections 13-319, 13-324,
6 and 13-2813 on the types of purchases, including rentals, listed in
7 subdivision (a) of this subsection for such taxes paid during each
8 year of the entitlement period in which the taxpayer is at or above
9 the required levels of employment and investment.

10 (3) Any taxpayer who qualifies for a tier 1, tier 2,
11 tier 3, or tier 4 project shall be entitled to a credit equal to
12 three percent times the average wage of new employees times the
13 number of new employees if the average wage of the new employees
14 equals at least sixty percent of the Nebraska average annual wage
15 for the year of application. The credit shall equal four percent
16 times the average wage of new employees times the number of new
17 employees if the average wage of the new employees equals at least
18 seventy-five percent of the Nebraska average annual wage for the
19 year of application. The credit shall equal five percent times the
20 average wage of new employees times the number of new employees
21 if the average wage of the new employees equals at least one
22 hundred percent of the Nebraska average annual wage for the year of
23 application. The credit shall equal six percent times the average
24 wage of new employees times the number of new employees if the
25 average wage of the new employees equals at least one hundred

1 twenty-five percent of the Nebraska average annual wage for the
2 year of application. For computation of such credit:

3 (a) Average annual wage means the total compensation paid
4 to employees during the year at the project who are not base-year
5 employees and who are paid wages equal to at least sixty percent
6 of the Nebraska average weekly wage for the year of application
7 divided by the number of equivalent employees making up such total
8 compensation;

9 (b) Average wage of new employees means the average
10 annual wage paid to employees during the year at the project who
11 are not base-year employees and who are paid wages equal to at
12 least sixty percent of the Nebraska average weekly wage for the
13 year of application; and

14 (c) Nebraska average annual wage means the Nebraska
15 average weekly wage times fifty-two.

16 (4) Any taxpayer who has met the required levels of
17 employment and investment for a tier 2 or tier 4 project shall
18 receive a credit equal to ten percent of the investment made in
19 qualified property at the project. Any taxpayer who has met the
20 required levels of investment and employment for a tier 1 project
21 shall receive a credit equal to three percent of the investment
22 made in qualified property at the project.

23 (5) The credits prescribed in subsections (3) and (4)
24 of this section shall be allowable for compensation paid and
25 investments made during each year of the entitlement period that

1 the taxpayer is at or above the required levels of employment and
2 investment.

3 (6) The credit prescribed in subsection (4) of this
4 section shall also be allowable during the first year of the
5 entitlement period for investment in qualified property at the
6 project after the date of the application and before the required
7 levels of employment and investment were met.

8 (7)(a) A taxpayer who has met the required levels of
9 employment and investment for a tier 4 project shall receive
10 the incentive provided in this subsection. Such investment and
11 hiring of new employees shall be considered a required level of
12 investment and employment for this subsection and for the recapture
13 of benefits under this subsection only.

14 (b) The following property used in connection with such
15 project or projects and acquired by the taxpayer, whether by
16 lease or purchase, after the date the application was filed shall
17 constitute separate classes of personal property:

18 (i) Turbine-powered aircraft, including turboprop,
19 turbojet, and turbofan aircraft, except when any such aircraft is
20 used for fundraising for or for the transportation of an elected
21 official;

22 (ii) ~~Mainframe business computers~~ Computer systems, made
23 up of equipment that is interconnected in order to enable the
24 acquisition, storage, manipulation, management, movement, control,
25 display, transmission, or reception of data involving computer

1 software and hardware, used for business information processing
2 which require environmental controls of temperature and power
3 and which are capable of simultaneously supporting more than
4 one transaction and more than one user. A computer system
5 includes ~~plus~~ peripheral components which require environmental
6 controls of temperature and power connected to such ~~computers.~~
7 ~~Computer peripheral~~ computer systems. Peripheral components shall
8 be limited to additional memory units, tape drives, disk drives,
9 power supplies, cooling units, data switches, and communication
10 controllers;

11 (iii) Depreciable personal property used for a
12 distribution facility, including, but not limited to, storage
13 racks, conveyor mechanisms, forklifts, and other property used to
14 store or move products; and

15 (iv) Personal property which is business equipment
16 located in a single project if the business equipment is involved
17 directly in the manufacture or processing of agricultural products.

18 (c) Such property shall be eligible for exemption from
19 the tax on personal property from the first January 1 following
20 the date of acquisition for property in subdivision (7)(b)(i)
21 of this section, or from the first January 1 following the end
22 of the year during which the required levels were exceeded for
23 property in subdivisions (7)(b)(ii), (iii), and (iv) of this
24 section, through the ninth December 31 after the first year ~~the~~
25 any property included in subdivisions (7)(b)(ii), (iii), and (iv)

1 of this section qualifies for the exemption. In order to receive
2 the property tax exemptions allowed by subdivisions (7)(b)(i),
3 (ii), (iii), and (iv) of this section, the taxpayer shall annually
4 file a claim for exemption with the Property Tax Administrator
5 on or before May 1. The form and supporting schedules shall be
6 prescribed by the Property Tax Administrator and shall list all
7 property for which exemption is being sought under this section.
8 A separate claim for exemption must be filed for each project and
9 each county in which property is claimed to be exempt. A copy
10 of this form must also be filed with the county assessor in each
11 county in which the applicant is requesting exemption. The Property
12 Tax Administrator shall determine the eligibility of each item
13 listed for exemption and, on or before August 10, certify such to
14 the taxpayer and to the affected county assessor. In determining
15 the eligibility of items of personal property for exemption,
16 the Property Tax Administrator is limited to the question of
17 whether the property claimed as exempt by the taxpayer falls
18 within the classes of property described in subdivision (7)(b) of
19 this section. The determination of whether a taxpayer is eligible
20 to obtain exemption for personal property based on meeting the
21 required levels of investment and employment is the responsibility
22 of the Tax Commissioner. Notwithstanding any other provision of
23 law, the Property Tax Administrator shall be allowed access to the
24 applications and such other records of the Department of Revenue as
25 necessary in order to determine the eligibility for exemption.

1 (8) The investment thresholds in this section for a
2 particular year of application shall be adjusted by the method
3 provided in this subsection. Beginning October 1, 2006, and each
4 October 1 thereafter, the Producer Price Index for all commodities,
5 published by the United States Department of Labor, Bureau of Labor
6 Statistics, for the most recent available period shall be divided
7 by the Producer Price Index for the first quarter of 2006 and
8 the result multiplied by the applicable investment threshold. The
9 investment thresholds shall be adjusted for cumulative inflation
10 since 2006. If the resulting amount is not a multiple of one
11 million dollars, the amount shall be rounded to the next lowest
12 one million dollars. The investment thresholds established by this
13 subsection apply for purposes of project qualifications for all
14 applications filed on or after January 1 of the following year
15 for all years of the project. Adjustments do not apply to projects
16 after the year of application.

17 Sec. 31. Section 77-5803, Revised Statutes Cumulative
18 Supplement, 2006, is amended to read:

19 77-5803 (1) Any business firm which makes expenditures
20 in research and experimental activities as defined in section
21 174 of the Internal Revenue Code of 1986, as amended, in this
22 state shall be allowed a research tax credit as provided in the
23 Nebraska Advantage Research and Development Act. The credit amount
24 shall equal ~~three percent of the amount expended in research and~~
25 ~~experimental activities by the business firm in the tax year in~~

1 ~~this state in excess of the base amount. The base amount is the~~
2 ~~average amount expended in research and experimental activities by~~
3 ~~the business firm in this state in the two tax years immediately~~
4 ~~preceding the first tax year that the credit is claimed. fifteen~~
5 ~~percent of the federal credit allowed under section 41 of the~~
6 ~~Internal Revenue Code of 1986, as amended. The credit shall be~~
7 allowed for the first tax year it is claimed and for the four tax
8 years immediately following.

9 (2) ~~The~~ For any business firm doing business both
10 within and without this state, the amount expended in research
11 and experimental activities in this state in any tax year may
12 be determined either by satisfactory proof of purchase or by
13 apportioning the amount ~~deducted~~ of the credit on the federal
14 income tax return to the state based on the average of the property
15 factor as determined in section 77-2734.12 and the payroll factor
16 as determined in section 77-2734.13.

17 Sec. 32. Section 77-5904, Revised Statutes Cumulative
18 Supplement, 2006, is amended to read:

19 77-5904 (1) The Department of Revenue shall accept
20 applications for tax credits from taxpayers who are actively
21 engaged in the operation of a microbusiness in a distressed area or
22 who will establish a microbusiness that they will actively operate
23 in a distressed area within the current or subsequent tax year.
24 Applications shall be filed by November 1 and shall be complete by
25 December 1 of each calendar year. Any application that is filed

1 after November 1 or that is not complete on December 1 shall be
2 considered to be filed during the following calendar year.

3 (2) The department may convene an advisory committee of
4 individuals with expertise in small business development, lending,
5 and community development to evaluate applications and advise the
6 department in authorizing tentative tax credits.

7 (3) The application shall be on a form developed by the
8 department and shall contain:

9 (a) A description of the microbusiness;

10 (b) The projected income and expenditures;

11 (c) The market to be served by the microbusiness and the
12 way the expansion addresses the market;

13 (d) The amount of projected investment or employment
14 increase that would generate the credit;

15 (e) The projected improvement in income or creation of
16 new self-employment or other jobs in the distressed area;

17 (f) The nature of the applicant's engagement in the
18 operation of the microbusiness; and

19 (g) Other documents, plans, and specifications as
20 required by the department.

21 Sec. 33. Sections 1, 3, 4, 5, 6, 7, 8, 12, 13, 14, 15,
22 22, 23, 24, and 35 of this act become operative on January 1, 2008.
23 The other sections of this act become operative on their effective
24 date.

25 Sec. 34. Original sections 77-3,112, 77-2712.03,

1 77-27,190, 77-27,192, 77-4105, 77-4110, 77-4933, and 77-5542,
2 Reissue Revised Statutes of Nebraska, and sections 77-2711,
3 77-2712.05, 77-27,187.01, 77-27,187.02, 77-27,188, 77-27,189,
4 77-5715, 77-5725, 77-5803, and 77-5904, Revised Statutes Cumulative
5 Supplement, 2006, are repealed.

6 Sec. 35. Original sections 77-375, 77-2701.35,
7 77-2703.04, 77-2790, 77-27,131, 77-3102, 77-3903, and 77-3904,
8 Reissue Revised Statutes of Nebraska, and sections 77-2701,
9 77-2701.04, 77-2703, 77-2753, and 77-2756, Revised Statutes
10 Cumulative Supplement, 2006, are repealed.

11 Sec. 36. The following section is outright repealed:
12 Section 77-2703.02, Revised Statutes Cumulative Supplement, 2006.